

Rescuing DoD From Too Much Of A Good Thing: The Wrong Kind Of Disaster Response

**A Monograph
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Abstract

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Shortly after Hurricane Katrina smashed the Southern United States, President Bush ignited a national debate over the role of federal troops in domestic disaster response. This paper is of interest to those military leaders whose opinion Congress will solicit as it contemplates changing the military's role in domestic disaster response. Before answering three questions the President posed questioning the military's role in future disaster responses, this paper evaluates the military response to Katrina by accounting for the scope of the disaster and underscoring past military contributions to the Gulf Coast national response effort.

Disasters like Hurricane Katrina are unique. Hurricane Katrina was a *catastrophic* disaster. Devastation on this grand a scale required federal disaster assistance to support an overwhelmed local disaster response system. In accordance with the National Response Plan, the Federal Emergency Management Agency (FEMA) accepted resource contributions from many federal agencies to help mitigate the disaster. In response to the disaster, DoD rushed to deploy operational, support, and planning elements to provide an immediate on-scene disaster response capability. Individual military commanders used initiative to alleviate civilian suffering, often having to negotiate with unfamiliar agencies or circumvent response procedures they did not fully understand in the first place. Apparently, local officials deemed the federal response too slow. However, based their perceptions of rapid, organized, military-response to Katrina, many citizens began calling for an increased role for the military in disaster response. Some even suggested granting a new role or greater authority for DoD in an effort to increase the military's contribution to the relief effort. New roles should not be the issue in the ongoing debate. Debate ought to discover ways to increase the military's participation in future disasters.

Ultimately, the military needs no new authority to increase its participation in domestic disaster response. To expand the military's participation in domestic disaster response, the military should implore elected leaders to be quicker to press the military into service under existing legislation. As early as today, the nation can realize an increased military participation in disaster response without changing the military's present role or authorities given to it in current legislation. By educating its members in relevant legislation that governs the military in domestic disaster response operations, the military could institutionalize the same proactive approach many commanders took during Hurricane Katrina and garner the nation's confidence in its military's ability to alleviate domestic suffering.

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I. Introduction

Shortly after Hurricane Katrina smashed the Southern United States, President Bush ignited a national debate over the role of federal troops in domestic disaster response. On 15 September 2005, he suggested a new mission for the armed forces by requesting “greater federal authority and a broader role” for the armed forces following disasters. Perhaps reacting to the popular view that relief efforts to that point had failed, he declared the military was the “institution of our government most capable of massive logistical operations on a moment’s notice.”¹ On 25 September, he challenged Congress to determine whether “there [existed] a natural disaster which -- of a certain size that would then enable the Defense Department to become the lead agency in coordinating and leading the response effort.”² Many believe the national debate centers on whether transferring political power from the states to the federal government would yield faster, better responses to national disasters. Federal and state decision makers must address the issue of federalization because comment is not within the military’s purview. However, within the context of its role in federal disaster response, the military has a duty to answer three important questions: What greater authority would it require? What broader role could the military assume to improve the federal response? What kind of natural disaster would require the Defense Department to become the lead agency in a response effort? The intent of this monograph is to suggest answers to these questions. The paper should be of interest to those senior military leaders whose opinion Congress will solicit as it debates the military’s role in domestic disaster response.

¹ Available online at <http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html> (2 December 2005).

² Available on line at <http://www.whitehouse.gov/news/releases/2005/09/20050925.html> (2 December 2005).

Background

Before answering the three questions, this paper evaluates the military response to Katrina by recounting the scope of the disaster and underscoring military contributions to the Gulf Coast response effort.

What is Response?

The terms “response” and “recovery” relate to post-disaster phases and, for purposes of this monograph, are not fungible. Response encompasses those activities that address the short-term, direct effects of an incident. Response activities include immediate actions to preserve life, property, and the environment. These activities involve meeting basic human needs and maintaining the social, economic, and political structure of the affected community.³ Recovery actions, not a particularly appropriate job for the military, are those actions to help individuals and communities return to normal.⁴ Hurricane Katrina caused such devastation that even after six months one can still say most of Louisiana is still doing response.

Katrina’s Scope

Hurricane Katrina was the “largest physical disaster this nation has suffered in modern history.”⁵ So, no other domestic response can serve as a standard for measuring the effectiveness of the national effort. For example, the terrorist attacks on the World Trade Center buildings and the Pentagon on 11 September 2001, physically destroyed small geographic areas, less than one-half square mile each. In both cases, single jurisdictions managed the immediate relief effort.

³ Description of response from the U.S. Department of Homeland Security. *National Response Plan*. Washington, D.C., December 2004, hereafter NRP, p.53.

⁴ U.S. Department of Homeland Security. *National Response Plan*. Washington, D.C., 1 March 2004. p.54. (NRP)

⁵ *Improving the National Response to Catastrophic Disaster*, a statement made before the Committee on Government Reform, House of Representatives by Dr. James Jay Carafano, Senior Research Fellow, The Heritage Foundation on September 15, 2005, available online at <http://www.heritage.org/Research/HomelandDefense/tst091505a.cfm> (19 December 2005).

Throughout the entire response, local infrastructure and other essential services were generally unaffected. The immediately affected population ranged in the tens of thousands. In contrast, Hurricane Katrina devastated much of the Louisiana and Mississippi coastlines and disrupted the lives of millions of residents.⁶ Hurricane Katrina's winds and rain destroyed most of the region's transportation, power, and communications networks. In the interest of saving lives and property, emergency response functions in the region quickly fell to any entities with unaffected capabilities rather than those specifically designed for emergency response. Images of post-Katrina Gulf Coast cities resembled towns ravaged by war. Disturbing images of desperate people sorting through their destroyed homes hoping to salvage anything of value, or thousands of refugees huddling in dingy shelters were common in the aftermath of Hurricane Katrina. By all accounts, Hurricane Katrina was a unique disaster that overwhelmed the entire response system as opposed to just one agency. A change in the military's role in disaster response must be realistic in its expectations given the need to respond to another Katrina-like event. Directly responding to the immediate needs of millions of people over thousands of square miles proved clearly beyond the scope of any one agency.

Catastrophic Events

Disasters like Hurricane Katrina are unique. For *common* disasters, the leadership of an affected region manages the relief effort using a layered response system. Beginning with the lowest government entity, each level of government applies its resources and those it can readily borrow from any unaffected neighbors, to mitigate the effects of the disaster before requesting assistance from the next higher level. The requests for additional assistance formally flow from local to state leaders. For common disasters, the federal government provides assistance only at the request of local and state governments; generally well before those lower entities become

⁶ See article by Arloc Sherman and Isaac Shapiro for more information on the *Essential Facts About The Victims Of Hurricane KATRINA* online at <http://www.cbpp.org/9-19-05pov.htm> (19 December 2005).

completely overwhelmed. Since common disasters affect relatively small regions, this layered response system has proven effective. Federal aid takes days to mobilize and typically arrives well after the local response has begun.

Hurricane Katrina was a *catastrophic* disaster. Catastrophes such as Katrina immediately exhaust all local and state resources. The storm destroyed large swaths of infrastructure critical to providing aid and degraded or destroyed outright most of the Gulf Coast's essential services. Without a capability to communicate or conduct personal damage assessments, state and local leaders lost their ability to prioritize needs because they were physically unable to articulate exactly what they needed. Typically, neighboring communities are the first to render aid following a disaster. But in a catastrophic event, the entire region, neighbors included, can be ravaged, taking away this traditional source of help. Under these conditions, it is easy to confuse military forces brought in from all over the country replete with robust communications and transportation assets with an effective response force.⁷

Military Support for a Catastrophic Event

According to the media, this hurricane was like no other in the history of the United States, levying wanton destruction on the southern United States with only wind and rain. The morning after the hurricane ended, one headline read "Destruction at Dawn. Among worst hit ..., few homes escaped at least minor damage and many were utterly destroyed. 10 killed."⁸ Two

⁷ The very fact that science can not predict with certainty when or where the next disaster event will occur, virtually guarantees that at least someone or something in the vicinity of where an event occurs will succumb to its effects. Despite their best efforts to prepare for disaster events but rarely announced publicly, few if any competent officials would seriously disregard the possibility of some amount of death and destruction in the aftermath of all disasters. Since officials in the United States do not restrict their citizens day-to-day activities or mandate stringent physical preparation procedures, means someone or some things will find themselves exposed when an event occurs. Without significantly interrupting most people's daily lives and costing nearly inconceivable sums of money, *guaranteeing* immunity from a catastrophic event's effects is simply not feasible in anywhere but perhaps a totalitarian state.

⁸ Headline in the *Miami Herald* on August 25, see note 14 for complete citation.

days later another read “The Toll Rises. 22 dead as the search continues. 63,000 homes destroyed. 175,000 homeless. 1 million without power.”⁹

Devastation on this grand a scale required federal disaster assistance to support an overwhelmed local disaster response system. On the same day the hurricane ended, the Federal Emergency Management Agency (FEMA) began responding to its 955th declared disaster with federally funded and managed aid resources.¹⁰ Local officials deemed the federal response too slow. Four days after the federal relief effort began, another headline captured the hopeless pleas of overwhelmed, desperate local officials, “WE NEED HELP! Relief effort collapsing due to United States inaction...Aid us now or more will die, Feds told.”¹¹ One local emergency response official said, “Where the hell is the cavalry on this one? We need food! We need water! We need people! If we do not get more food into the south end in a very short period of time, we are going to have more casualties!”¹² *The New York Times* recorded the governor’s extreme frustration with the FEMA-led federal response effort, “We’ve got 120,000 C-ration meals that are here somewhere, but we don’t know where the hell they are. Right now, a truckload of food gets there, 200 people show up, 50 people get food and 150 people are angry. We’ve got to solve that.”¹³

President Bush responded by ordering federal armed forces to the region. As relief efforts neared collapse, one newspaper reported that “more than 1,500 airborne U.S. soldiers were ordered into the [area] to cope with what is now being called the worst natural disaster in United

⁹ Headline in the *Miami Herald* on August 27, see note 14 for complete citation.

¹⁰ FEMA assigns a new consecutive integer value to each declared disaster it manages.

¹¹ Headline in the *Miami Herald* on August 28, see note 14 for complete citation.

¹² A quote from Dade County’s Emergency Director Kate Hale in an article in the August 28 *Miami Herald*, see note 13 for complete citation.

¹³ From in the *Washington Post* on August 13, see note 14 for complete citation.

States history. The move came after a day of bitter sniping among agencies that share responsibility for the relief effort.”¹⁴

Although many who participated in Hurricane Katrina relief operations may remember similar comments, these particular headlines describe Hurricane Andrew, which hit Florida on 24 August 1992. After Andrew, the Army’s leadership explored the implications of expanding its role in disaster response. In 1993, a RAND analysis first addressed the question: “What broader role could the military assume to improve the federal response?”

The Post-Andrew Need for a New Disaster Response Role

In 1993, John Y. Schrader authored a RAND study called *The Army’s Role in Domestic Disaster Support, An Assessment of Policy Choices*. In the wake of the 1992 hurricanes and amid much criticism of slow federal disaster response, Schrader suggested the active Army leadership redefine the Army’s course of action during disasters. He recognized that although the Army generally contributed more forces to federal military responses than any other branch, it did not have the authority to define the Army’s role in them. The RAND author noted that the public expected the Army to respond to civil disasters quickly, and that without a defined role the Army would be vulnerable to criticism if associated with a slow federal response. The RAND study recommended that the Army support a formal acceptance of civil disaster response missions, review the disaster response arrangements with other agencies, transfer disaster response executive authority from the Army to the Chairman of the Joint Chiefs of Staff, and review the legal constraints on military participation in civil disaster response.¹⁵ The military and Department of the Army leaders generally adhered to these recommendations.

¹⁴ This headline in the *Miami Herald* on August 28, 1992. The *Miami Herald* and the *Washington Post* published several articles on the ongoing hurricane relief efforts. Many of the newspapers’ hurricane relief articles can be found online at http://www.bariumblues.com/deadly_silences.htm (19 December 2005).

¹⁵ John Y. Schrader, *The Army’s Role in Domestic Disaster Support, An Assessment of Policy Choices*, RAND Arroyo Center, 1993.

A Slow Hurricane Katrina Response

Hurricane Katrina in 2005 demonstrated that although the role of the active military remained important to the successful prosecution of a major disaster response, not much else has changed since 1993.

Hurricane Katrina was the third major hurricane, and the first Category 5 hurricane, of the 2005 Atlantic hurricane season. Katrina made landfall in southern Florida on 25 August as a weaker hurricane, crossed Florida and then the Gulf of Mexico all the while gaining strength. On 29 August, Katrina made landfall again near New Orleans as a Category 4 storm.¹⁶ The hurricane brought large quantities of rain that eventually compromised the city's protective levee system. When the levees failed, Lake Pontchartrain, swollen from the hurricane's rain, flooded most of New Orleans. This and other hurricane damage to Louisiana, Mississippi, and Alabama made Katrina one of the worst natural disasters in the history of the United States.¹⁷ Almost immediately after the request from local officials, the federal government responded to the disaster as it did to Andrew. In accordance with the National Response Plan, FEMA accepted resource contributions from many federal agencies to help mitigate the disaster. The Department of Defense (DoD), specifically the Army, was again the federal government's largest manpower contributor.¹⁸

¹⁶ The National Weather Service (NWS), a division National Oceanic and Atmospheric Administration, categorizes hurricanes' intensities using the Saffir-Simpson Hurricane Scale. This scale awards a nominal 1 to 5 rating based on the hurricane's intensity. The NWS uses the rating to advertise the estimated potential property damage and flooding expected from a hurricane landfall. Wind speed is the determining factor in the scale. A Category 5 hurricane has winds greater than 155 mph. Katrina lost a bit of strength as it made landfall, arriving as only a Category 4 hurricane whose sustained winds are between 131 and 155 mph. Data from <http://www.nhc.noaa.gov/aboutsshs.shtml> (19 December 2005).

¹⁷ Katrina's qualitative damage assessment from a description found in http://en.wikipedia.org/wiki/Hurricane_Katrina (19 December 2005).

¹⁸ The Department of Homeland Security (DHS) reports deploying 72,000 federal personnel to support Hurricane Katrina recovery. On the same webpage, DHS reports the DoD deployed 22,000 active troops and 50,000 National Guardsmen. Find this and other Hurricane Katrina federal agency response statistics online at <http://www.dhs.gov/interweb/assetlibrary/katrina.htm> (19 December 2005).

In response to the disaster, DoD rushed to deploy operational, support, and planning elements to provide an immediate on-scene disaster response capability. Perhaps as impressive as its operational troop deployments was DoD's rapid commitment of its only deployable operational-level command and control elements. On 1 September 2005, only three days after Katrina made landfall in New Orleans, U.S. Northern Command (NORTHCOM) established Joint Task Force Katrina (JTF-K) at Camp Shelby, Mississippi, under Lieutenant General Russel Honore, to coordinate the DoD efforts in support of FEMA. Two Standing Joint Force Headquarters (SJFHQ)--one from NORTHCOM and another from Joint Forces Command (JFCOM)--deployed to the region to augment the new JTF. NORTHCOM's SJFHQ-North provided an "augmentation cell and its command-and-control vehicle" to the JTF. The SJFHQ from JFCOM under Major General Jon Gallinetti, USMC, deployed directly to Baton Rouge to support FEMA planning efforts.¹⁹ While the media lauded DoD's initial response to Katrina, not all elements of the federal government enjoyed their praise.²⁰

Editorial writers were not the only ones to criticize the government's response to Katrina. Shortly after the levees were breached, the federal government began receiving scathing criticism from many public figures. In a radio conference on September 1, the mayor of New Orleans, Ray

¹⁹ The military chain of command morphed many times during Hurricane Katrina. An incomplete initial military chain of command in place during Hurricane Katrina relief operations is available online at <http://www.globalsecurity.org/security/ops/jtf-katrina.htm>. Another is available online from http://www.floridaprayer.org/prayer_alerts/05_sept.cfm. (19 December 2005).

²⁰ On 5 September 2005, LTG Honore requested an element capable of strategic planning to augment his JTF headquarters. Within 96 hours of his request, the School of Advanced Military Studies (SAMS) at Fort Leavenworth, Kansas, assembled a team of planners and sent a small liaison cell to Louisiana. The SAMS liaison team in Louisiana would forward requests for planning support to the larger dedicated SAMS planning element at Fort Leavenworth. The author was the chief of plans for the Leavenworth Hurricane Katrina support planning team. In this role, he received privileged and candid feedback from both civilian and military officials pertaining to the federal disaster response effort. At the time of their conversations with the author, officials understood and provided comments under the SAMS's no-attribution policy. For a sense of the media's criticism of the federal response efforts and praise of the military's, see Jonathan S. Landay, Seth Borenstein and Alison Young, Knight Ridder Newspapers, *Response to Rita Illustrates How Government Failed After Katrina* online at www.realcities.com/mld/kwashington/12741156.htm and Ruben Navarrette, Union-Tribune, *Using the Military in Civilian Emergencies* online at www.signonsandiego.com/news/op-ed/navarrette/20050928-9999-lz1e28navar.html (21 December 2005).

Nagin, said “You mean to tell me that a place where you probably have thousands of people that have died and thousands more that are dying every day, that we can't figure out a way to authorize the resources that we need? Come on man.” Specifically he made a direct plea for immediate federal response, “Get off your asses and let's do something.”²¹ During a nationally televised relief concert on 2 September, music producer and rapper Kanye West introduced a theme that would overshadow all federal relief efforts to follow, stating: “George Bush doesn't care about black people.” He accused the media of racism as well. West enjoined the media to stop referring to African-American families as “looters” and white families as “looking for food.”²² Faced with a domestic crisis, volumes of negative press, and even accusations of racism, the federal government stepped up its efforts to respond to Katrina.

The Relief Effort Gets a New Face and the Military Gets a New Mission

On September 9, Department of Homeland Security (DHS) Secretary Michael Chertoff removed FEMA director Michael Brown as director of the Hurricane Katrina relief efforts in New Orleans.²³ The DHS Secretary installed Vice Admiral Thad W. Allen, Chief of Staff of the U.S. Coast Guard, as Principle Federal Official (PFO). This leadership change improved the federal government's image.

The positive public relations effect of putting a military figure in charge of disaster response was not lost on President Bush. On 15 September, President Bush suggested “greater federal authority and a broader role for the armed forces” during disaster response.²⁴ And later he

²¹ Both Mayor Nagin quotes from <http://www.cnn.com/2005/US/09/02/katrina.nagin/index.html> (21 December 2005).

²² Both Kanye West quotes from a transcript of the concert hosts' allegedly unscripted dialogue found online at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/03/AR2005090300165.html> (19 December 2005).

²³ Mr. Brown official resigned from FEMA on 12 September 2005. He said his resignation was in the best interest of the agency and best interest of the president. (http://en.wikipedia.org/wiki/Michael_Brown, 21 December 2005).

²⁴ Available online at <http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html> (21 December 2005).

challenged Congress to determine whether “there [existed] a natural disaster which [could be big enough to] enable the Defense Department to become the lead agency in coordinating and leading the response effort.”²⁵

What Now?

The President’s comments spawned a national debate yet to be resolved among the country’s elected civilian officials. However, as a prelude to the formulation of specific policy directives by its civilian leaders, the military can inform the debate by proactively answering three important questions about what it believes its role should be in future disaster responses. Namely, what greater authority would it require? What broader role could the military assume to improve the federal response? And what kind of natural disaster would require the Defense Department to become the lead agency in coordinating and leading the response effort?

²⁵ Available on line at <http://www.whitehouse.gov/news/releases/2005/09/20050925.html> (21 December 2005).

II. What Greater Authority Would the Military Need?

Many Americans assume their military forces cannot assume a greater role in domestic disaster relief without significant modifications to federal law. If by a greater role the nation actually means a greater level of participation by the military, current laws and policies already exist to grant the military all the authority it needs to assume a larger role in domestic disaster response. Certain legislation, particularly the Posse Comitatus Act, the Insurrection Act, Disaster Mitigation Act (also called the Stafford Act), Homeland Security Act, and the President's Homeland Security Directive (HSPD)-5, specifically define the military's role in domestic operations. The military does not need modifications to the existing legislation to assume a broader role in domestic disaster response. The military requires civilian leaders to be more liberal about pressing the military into service under whichever legal means they deem appropriate to secure the effect of an increased military role in disaster response.

Since the terror attacks of 11 September 2001, the federal government's plans to "prevent, prepare, respond, and recover" from Incidents of National Significance (INS) rest on the premise that local institutions like police, fire and other emergency agencies are the best first responders.²⁶ Federal laws and policies governing disaster relief reflect the federal government's backup function to state and local entities. Federal legislation specifically relegates the military to a role of support to civilian authorities. Response to Hurricane Katrina showed that as long as the military acts with a genuine concern to alleviate suffering, the American public cares little about what statute authorizes military relief operations. It remains the duty of all commanders participating in disaster response to ensure their operations are legal and in the best interest of the nation.

²⁶ The 2004 National Incident Management System (NIMS), p. 1, names the phases of incidence management. Homeland Security Presidential Directive (HSPD) 5 establishes threshold criteria for declaring incidents ones of National significance. Incidents of this kind can include acts of terrorism, fires, floods, hazardous material spills, nuclear accidents, aircraft accidents, earthquakes, hurricanes, tornadoes, typhoons, war-related disasters, etc. HSPD-5 tasked the Secretary of Homeland Security to create and administer a process to ensure a consistent nationwide approach for incidence management.

While not nearly inclusive of all the documents governing federal government response, the above pieces of legislation define much of the military's legal boundaries.²⁷ The boundaries have what amount to seams that can shift over time. For the military commander, these seams create a confusing, often contradictory, set of limits to his actions that often only the immediacy of the situation or a group of lawyers can clarify. Nonetheless, an understanding of the documents ostensibly restricting military operations can provide a military commander with the ability to adjust his civil support operations as situations and laws change.

Posse Comitatus Act

The Posse Comitatus Act (PCA) is a law specifically crafted to prevent the military from conducting domestic law enforcement. Although originally passed in 1878, the law remains largely unchanged.²⁸ In the author's personal experience, most military officers, if familiar with

²⁷ The US Army's Judge Advocate General's Legal Center and School's Operational Law Handbook (2006) cites 11 federal laws that govern the Armed Forces in domestic operations. The number of statutes governing the entire federal government would be much more. Addressing all the acts pertaining to federal disaster response is clearly beyond the scope of this monograph.

²⁸ Congress passed the PCA in 1878 specifically to prevent the Army from using unregulated and oppressive practices for domestic civil control in the recently defeated Confederate States. Although passed immediately after the Civil War, the act traces its roots to colonial American documents.

The Founding Fathers abhorred the idea of a large, standing military intervening in domestic issues. The Declaration of Independence condemned King George III of employing "large Armies ... to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled" ("The Declaration of Independence of the Thirteen Colonies", Congress, 1776). The US Constitution diffuses the control of the military and limits the military's size. It carefully divides "the control of the military between the President and Congress and [shares] the control of the militia with the states" (U.S. Library of Congress. *The Use of Federal Troops for Disaster Assistance: Legal Issues*. Report for Congress prepared by Jennifer K. Elsea. September 16, 2005, p. 1).

Around the Civil War period, American citizens experienced federal armed forces involvement in many domestic issues. Especially in the former Confederate States, the federal forces continued to enforce the laws even when local authorities had the means. Federal troops responded to civil disturbances, labor riots, and race riots. Evidence suggests the military even influenced the Hayes-Tilden presidential election. Eventually, citizen discontent and disagreement in the Democratic House and Republican Senate over military funding eventually led to the creation of a prohibition of posse comitatus. The United States Congress decided it would not fund a military force for which it did not expressly authorize use. For additional information on instances of domestic use of U.S. military forces see Library of Congress. *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*. Report for Congress prepared by Charles Doyle. June 1, 2000.

Posse comitatus in Latin means "the force of the country" and generally refers to an authority exercised by a local law enforcement official to draft any able-bodied male to assist him in keeping the

no other legislation governing domestic operations, believe they understand the limitations imposed on their actions by the PCA. In truth, most do not. Though military commanders must comply with this law whenever their forces conduct domestic operations (absent any other authority), few realize that Congress can waive the PCA. Military commanders should never exclude the possibility of conducting domestic law enforcement based solely on the restrictions of the PCA. Congress can and has waived the limitations imposed on the military by the PCA.

The PCA only prevents the military from conducting domestic law enforcement, not from conducting domestic operations. For such a succinct law, the PCA has somehow become the most restrictive law governing a commander's use of his forces in disaster response. The current version of the Posse Comitatus Act states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both. (18 United States Code § 1385).

There is no criminal violation of the Posse Comitatus Act when (1) the Constitution or Congress expressly authorizes use of part of the [Armed Forces] as a posse comitatus or otherwise to execute the law; (2) when the activity in question does not involve use of part of the armed forces covered by the proscription; and (3) when the activity in question does not constitute "execution of the law."²⁹ Although Congress may waive the PCA if it chooses, it has instead passed several exceptions into law.

peace or to pursue felons. ([http://en.wikipedia.org/wiki/Posse_Comitatus_\(Common_Law\)](http://en.wikipedia.org/wiki/Posse_Comitatus_(Common_Law))) (23 December 2005).

²⁹ *The Use of Federal Troops*. Report for Congress prepared by Jennifer K. Elsea. September 16, 2005. pg CRS-16. As written, the PCA does not apply to the Navy or Marines or the states' National Guard. However, section 375 of United States Code (U.S.C) Title 10 restricts the "direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless ... authorized by law, and does not prohibit activities conducted for a military purpose that incidentally benefit civilian law enforcement entities." ("Restriction on Direct Participation by Military Personnel" Title 10 U.S.C § 375)

Congress has provided some legal exceptions to the domestic use of military forces. National Guard forces not in a federalized status may conduct domestic law enforcement operations under legislation presented later in this chapter. Congress has also granted the Coast Guard, a federal armed service, law enforcement authority and has given various federal agencies the ability to request law enforcement assistance.³⁰ Congress also authorized the armed forces to share information and equipment with civilian law enforcement agencies in 10 U.S.C §§371-382.³¹

Seeking strict adherence to the PCA likely frustrated military commanders during the Katrina response. Absent any special Congressional exceptions, most active federal force commanders could not legally perform law and order functions they routinely ordered while overseas. For example, active forces could not directly conduct investigations, prevent theft, enforce local curfews, question or detain citizen suspects on non-federal properties. Faced with the legal constraints of the PCA and the obvious need to enforce law and order, many active commanders involved in Hurricane Katrina adopted creative ways to accomplish certain law-enforcement functions. With original thinking and the diligent work of legions of military attorneys resident in every active headquarters, these commanders ensured adherence to the PCA.³² To date, the United States has not prosecuted a single commander for violating the PCA.

Insurrection Act

The active military forces can conduct limited law enforcement operations under authority of the Insurrection Act (IA) in which Congress has delegated authority to the President to use the military to suppress an insurrection or civil disturbance. Rapidly granting the military

³⁰ 14 U.S.C § 89 specifically authorizes “The officers of the Coast Guard insofar as they are engaged ...in enforcing any law of the United States.”

³¹ Subtitle A, Part 1, Chapter 18 of 10 U.S.C, (§§371-382) regulates the Department of Defense’s interaction with civilian law enforcement agencies.

³² The author received insights into the challenges the PCA posed to active forces from both direct participation in the Katrina relief planning effort and from a senior Army commander’s observations. The senior Army commander gave his observations under the School’s non-attribution policy.

the authority to conduct law enforcement greatly enhances local officials' ability to maintain or restore order in the aftermath of a catastrophic disaster like Hurricane Katrina.

Congress authorizes the President to use the military in any state under one of four conditions: (1) at the request of a state government; (2) if he believes that a specific amount of military force can enforce the laws in conditions under which "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States make" enforcement of the laws of the United States impractical in the state; (3) to "suppress any insurrection, domestic violence, unlawful combination, or conspiracy" if he perceives a state's citizens' constitutional rights are violated and "authorities of that state are unable, fail, or refuse to protect [those] right[s], [and] privilege[s]"; or (4) if the state obstructs either execution of the law or impedes the course of justice. While the President may use his powers under the IA without a request from state officials, he must first issue a proclamation to the belligerents to disperse.³³

The IA has been used to send the armed forces to suppress civil disturbances a number of times during U.S. history. President George H. W. Bush used federal troops to suppress looting in St. Croix, Virgin Islands during Hurricane Hugo in 1989 and to impose order during the 1992 Los Angeles riots.³⁴ The current President did not invoke the IA to suppress looting or impose order in the aftermath of Hurricane Katrina. Perhaps invoking the IA would have solved the looting but ultimately would have done nothing more. Katrina virtually destroyed all of New Orleans' material goods, making looting futile at best.

³³ Liberally quoted in this section, 10 U.S.C. §§331-334 defines the congressionally acceptable conditions under which the President can use the military domestically. According to 10 U.S.C. § 335, the term "state" includes US Territories and possessions, such as Guam and the US Virgin Islands. The 'suppression of any insurrection', 'states who fail to protect citizens rights', and 'obstructionist states' clauses under the IA can be found in 10 U.S.C. § 333.

³⁴ U.S. Library of Congress. *The Use of Federal Troops for Disaster Assistance: Legal Issues*. Report for Congress prepared by Jennifer K. Elsea. September 16, 2005, 3.

Disaster Mitigation Act (a.k.a the Stafford Act)

The Disaster Mitigation Act, better known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, authorizes the President to provide federal aid to states affected by disasters. Without this law, the military would have no legal authority to conduct disaster relief operations. Unfortunately, the President must follow a cumbersome procedure prior to empowering the military to act.

The Act provides four ways through which the federal government may become involved in any relief effort. It requires that the President (1) declares an area a major disaster; (2) declares an area an emergency; (3) exercises a limited-duration emergency authority; or (4) commits federal assets in those areas for which the federal government is primarily responsible.³⁵ Although the Stafford Act gives the President the authority to use federal assets for disaster relief, the Act mandates that he receive a formal request for assistance from a local official prior to execution of his statutory authority much like the children's game Simon Says.³⁶ In every case, the local official, generally the state's governor must first execute his emergency plan and must declare that local capabilities are insufficient to deal with the disaster. For common disasters, this system works well. However, Hurricane Katrina showed how cumbersome this system could be in response to a catastrophic event.

³⁵ The Disaster Mitigation Act, 42 U.S.C. §§ 5121 et seq established the common name the Stafford Act. According to 42 U.S.C. § 5122a "Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States". 42 U.S.C. § 5170 sets the declaration of a major disaster's threshold as one "of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance is necessary". 42 U.S.C. § 5122a defines an emergency as "any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States." 42 U.S.C. § 5191a allows the President to declare an emergency when "the situation is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance is necessary." 42 U.S.C. § 5191 b-c describe the President's authority over federal property and the President's emergency response authority.

³⁶ Except in those instances where the majority of the damage is to 'primarily federal property' – see 42 U.S.C. § 5191b.

While the Stafford Act grants the President authority to use any federal agency, particularly the military, to render essential assistance, it does not give the President *carte blanche* to task the military.³⁷ Contingent on the formal request from a local official, the President may direct the Secretary of Defense “to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property.”³⁸

Once approved by the Secretary of Defense, the military may perform and provide certain types of emergency work and services under the Stafford Act.³⁹ According to the Act, the military may conduct: debris removal; search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; demolition of unsafe structures which endanger the public; and warning of further risks and hazards; dissemination of public information and assistance regarding health and safety measures; provision of technical advice to state and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety.⁴⁰ With the

³⁷ 42 U.S.C 5170 b allows the President to authorize any federal agency to “provide assistance essential to meeting immediate threats to life and property resulting from a major disaster”.

³⁸ U.S. Library of Congress. *The Use of Federal Troops for Disaster Assistance: Legal Issues*. Report for Congress prepared by Jennifer K. Elsea. September 16, 2005.

³⁹ 42 U.S.C 5170 c. defines the term “emergency work”. The definition allows for clearance and removal of debris and wreckage, and temporary restoration of essential public facilities and services. This section also imposes a 10-day time limit. See the National Emergencies Act. 50 U.S.C. §§1601-1603 for additional procedures which govern the President’s emergency declarations and terminations. Beyond that, the Act says the President should seek authority from other statutes to continue emergency work. Military forces should not consider the 10-day limit a hard constraint. During Hurricane Katrina relief operations, the School of Advanced Military Studies (SAMS) maintained a four-man forward liaison in Louisiana for more than 21 days, the JTF-K staff arrived before the SAMS team and departed months after them.

⁴⁰ 42 U.S.C 5170 b (a)(3).

authority granted by the Stafford Act, one can hardly imagine what other authority the military needs to conduct domestic disaster relief operations.

That said, military forces operating under Stafford Act authority alone are not exempt from the provisions of the Posse Comitatus Act. Even in the event of civil disobedience like happened after Hurricane Katrina, the President does not have the authority under this Act to employ federal troops in law enforcement. For that, he must invoke the Insurrection Act. Since, in the aftermath of Katrina, the President did not invoke the IA, federal forces operating under the Stafford Act could not, for example, confiscate property, interrogate persons, or even provide infrastructure security for facilities used in the relief efforts, unless such activities served a military purpose. Federal troops could not conduct security patrols to prevent or curtail looting or prevent rebellious assemblies. Paradoxically, patrolling coincident with emergency work operations, such as dispensing medical care or urban search and rescue were permissible under the Stafford Act and did not violate the Posse Comitatus Act.⁴¹

Homeland Security Act

On 25 November 2002, the 107th Congress enacted Public Law 107-296 or the Homeland Security Act of 2002, later incorporated in the United States Code under Title 6, §§ 101-557, which formally established the DHS. Congress gave DHS the mission and legal authority to protect the American people from the threat of terrorism and coordinate domestic incident

⁴¹ U.S. Library of Congress. *The Use of Federal Troops for Disaster Assistance: Legal Issues*. Report for Congress prepared by Jennifer K. Elsea. September 16, 2005, 4. Mixing non-federal National Guard troops and federal troops should not occur if possible because the PCA restricts active troops governed by the Stafford Act alone. While, the Posse Comitatus Act does not restrict National Guard units under state control, it does restrict National Guard units in a federal service status. The PCA restricts federalized National Guard units to the relief operations authorized in the Stafford Act. Therefore, the limitations imposed by the Stafford Act on federalized States' National Guard troops should weigh negatively against any decision to federalize the National Guard. Likewise, any active duty troops operationally controlled by non-federal National Guard must remain aware of their Stafford Act limitations or risk violating the law.

management. This act is important to active military commanders because it formally established the DHS as the national emergency response planning lead.

Under the act, the primary mission of DHS is to prevent terrorist attacks within the United States; reduce the vulnerability of the United States to terrorism at home; minimize the damage and assist in the recovery from terrorist attacks that occur; and carry out all functions of entities transferred to the Department, including by acting as [the federal] focal point regarding natural and manmade crisis and emergency planning.⁴²

The latter mission is particularly important to active military forces involved in natural disaster response. This means the actions of the DoD and all other federal agencies instantly became statutorily subordinate to DHS's crisis response planning and direction. In military terms, the DHS becomes the supported commander. Likewise, the disaster relief plans and operations of DoD and all federal agencies had to change to accommodate the DHS's disaster response primacy. In theory anyway, this powerful Act combined with Presidential Security Directive (HSPD)-5, set the conditions for a unified, effective approach to domestic prevention, preparedness, response, and recovery activities.⁴³

President's Homeland Security Directive # 5 (HSPD-5)

On 28 February 2003 the President issued HSPD-5 to enhance the ability of the United States to manage domestic incidents. HSPD-5 established "a single, comprehensive national incident management system."⁴⁴ HSPD-5 mandated DoD participation in incident management

⁴² For a detailed list of the Department of Homeland Security missions see 6 U.S.C. § 111. For a short summary, see the National Response Plan (2004) p. 78. The Act does not "confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor does anything in this act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities". 6 U.S.C § 456.

⁴³ The National Response Plan [NRP] (2004), p. 78.

⁴⁴ On October 29, 2001, President Bush designated special directives called Homeland Security Presidential Directives or HSPDs that "would record and communicate presidential decisions about the homeland security policies of the United States." (www.whitehouse.gov/news/releases/2001/10/20011030-

but allowed the DoD Secretary some discretion to retain assets for his primary mission and forced DoD to agree to use the National Incident Management System (NIMS) and the National Response Plan (NRP) when responding to domestic disasters.

In the directive, the President designated the Secretary of Homeland Security as the Principle Federal Official (PFO) for domestic incident management. Under this designation, the Secretary coordinates all federal government resources utilized in response to, or recovery from, incidents of national significance under four conditions: (1) a federal department or agency requests the assistance of the Secretary; (2) overwhelmed state and local authorities request federal assistance; (3) response to an incident substantially involves more than one federal department or agency; (4) the President directs the Secretary to assume responsibility for managing a domestic incident.⁴⁵ This directive would have to change only if a broader role for the military meant it now would lead domestic incident management, a change few military officers would welcome.

HSPD-5 directed all departments and federal agencies to provide their “full and prompt cooperation, resources, and support” to the Secretary of Homeland Security. However, the directive also granted some special exceptions to the DoD. The directive mandated the Secretary of Defense to support relief efforts only consistent with readiness and ordered him to retain command of military forces providing civil support. Also unique to DoD, the directive required the active military to establish appropriate relationships and mechanisms for cooperation and coordination with DHS.⁴⁶

[1.html](#)) (21 December 2005). Specific quotes from the HSPD-5 are from the actual document from the U.S. President. Homeland Security Presidential Directive-5. “Management of domestic incidents.” Washington D.C., 28 February 2003. Available online at www.whitehouse.gov/news/releases/2003/02/20030228-9.html (27 September 2005).

⁴⁵ U.S. President. Homeland Security Presidential Directive-5. “Management of domestic incidents.” Washington D.C., 28 February 2003. Available online at www.whitehouse.gov/news/releases/2003/02/20030228-9.html (27 September 2005).

⁴⁶ U.S. President. Homeland Security Presidential Directive-5. “Management of domestic incidents.” Washington D.C., 28 February 2003. Available online at www.whitehouse.gov/news/releases/2003/02/20030228-9.html (27 September 2005).

The directive solidifies the President's desire for a consistent nationwide approach for all levels of government to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity by directing the creation of two synchronization documents: the National Incident Management System (NIMS) and the National Response Plan (NRP). These documents are particularly important to active military forces supporting civilian authorities because they provide a basis of reference for interoperability and compatibility among federal, state, and local capabilities.⁴⁷ Furthermore, HSPD-5 mandates all federal departments and agencies adopt the NIMS and NRP when supporting state and local entities. This Presidential Directive need not change in order to allow the military a broader role in domestic disaster response as long as the military does not intend to lead the entire national response effort.

National Incident Management System

The National Incident Management System (NIMS), is the doctrinal framework for incident management at all jurisdictional levels, regardless of the cause, size, or complexity of the incident.⁴⁸ The NIMS is not an inclusive management or resource allocation plan but rather a document that establishes a common philosophy and national lexicon for incident management. Military commanders must understand the NIMS if they hope to effectively operate in the domestic management system. Unfortunately, not every entity affected by it follows it.

The NIMS' components form a structure that attempts to decrease, not eliminate, potentially inefficient interactions between organizations attempting to respond to an incident. By requiring only loose organizational standards on federal response organizations, the NIMS

⁴⁷ U.S. President. Homeland Security Presidential Directive-5. "Management of domestic incidents." Washington D.C., 28 February 2003. Available online at www.whitehouse.gov/news/releases/2003/02/20030228-9.html (27 September 2005)..

⁴⁸ The National Response Plan (2004),p.i.

allows local authorities to communicate their needs to the federal aid agencies using predictable procedures.

Unfortunately, local officials can, and during Hurricane Katrina did, circumvent the NIMS procedures. For example, on 5 September, Minnesota Sheriff Patrick McGowan responded to a request for communications equipment from a National Sheriffs Association colleague in Louisiana. Bypassing the NIMS request structure by going directly to Louisiana state officials under a state-to-state Emergency Management Assistance Compact, Sheriff McGowan sent some of his deputies and a \$2 million mobile command post to his Louisiana colleague. By the time the aid package from Minnesota reached the Louisiana sheriff, he had already restored his communications. So the local sheriff sent them to the next parish which didn't need them either. The Minnesotans continued south and eventually established a command post on the southern tip of Louisiana, where they hosted sheriffs' deputies from Massachusetts and Kentucky, National Guard troops from New Mexico, and other aid workers.⁴⁹ Circumventing the NIMS is tempting, but doing so degrades the effective allocation of overall resources.

Some may argue that because the exact coordination structure in the NIMS did not survive its first major hurricane intact, the federal government should rewrite the NIMS to account for Katrina. Since Katrina was such an exceptional case, it would be futile to copy the precise structure used in Louisiana as the model for future disasters. In any case, the document need not necessarily change for the military to increase its role in disaster response.

Defense Policies That Govern Support to Civil Authorities

The DoD has the mission to respond to domestic disasters. As such, it has several policies that govern planning and response by all of its components for any assistance rendered to civilian

⁴⁹ Paraphrased from an article in the National Journal by Sydney J. Freedberg Jr, on October 11, 2005, titled *In One Louisiana Parish, Flexibility Trumps Bureaucracy* available online at <http://www.govexec.com/dailyfed/1005/101105nj1.htm> (28 December 2005).

authorities. The principal policies are Defense Directive 3025.1, Military Support to Civil Authorities (MSCA), Defense Directive 3025.15, Military Assistance to Civil Authorities, and the Strategy for Homeland Defense and Civil Support. The 1993 and 1997 Directives, while a bit dated, establish the policy by which the Department responds to incidents of national significance. The Strategy for Homeland Defense and Civil Support, published in June 2005, mainly addresses a homeland defense strategy but also provides a guide for DoD components conducting civil support activities.

Department of Defense Directives

Defense Directives (DODD) 3025.1, Military Support to Civil Authorities, and 3025.15; Military Assistance to Civil Authorities, define the DoD's system to plan and respond to requests for support to civilian authorities.⁵⁰ The Directives delegate certain broad approval authorities. The Secretary of Defense retains the approval authority for support of civil authorities involving: the supported combatant commander's (COCOM) resources; DoD support during civil disturbances; DoD responses to acts of terrorism; and DoD support that could lead to the use of lethal force. The Joint Staff's Joint Director of Military Support (JDOMS) has the approval authority for emergency support in response to natural or man-made disasters.⁵¹ The Directives grant DoD Component or local military commanders the ability to, without prior approval, conduct necessary actions to "save lives, prevent human suffering, or mitigate great property

⁵⁰ Directive 3025.15 follows 3025.1 but does not supersede it. The directives first establish the Department's policy for civil support then assign additional civil support responsibilities to different senior defense officials. The Directives do not address non-federalized National Guard assets in support of local and/or state civil agencies.

⁵¹ DoD Directive 3025.15 grants the Secretary of the Army executive agent responsibilities, specifically approval authority, for emergency support in response to natural or man-made disasters but this authority now rests with the Assistant Secretary of Defense for Homeland Security (ASD-HD) who as delegated the responsibility to the Joint Staff's Joint Director of Military Support (JDOMS). See CJCSI 5711.02B, 20 October 2003.

damage under imminently serious conditions.”⁵² Commanders who provide ‘immediate response’ support must notify the JDOMS immediately.

Senior military commanders involved in the Hurricane Katrina relief effort often invoked the “saving lives-prevent suffering” clause in the DoD directives to accomplish missions civilian relief agencies were unable or unwilling to do. A senior Army commander told of how his superior analyzed his very real concern about using federal troops in violation of the law. The more senior commander asked his subordinate if his soldiers were saving lives. The junior responded that they were, but the law did not explicitly allow for their actions. The superior told him to continue order operations consistent with life-saving actions and never to “get stuck on stupid.” The higher-ranking officer jokingly reminded the junior that if the troops’ actions contributed to saving lives, as his boss he intended to support his actions “all the way till [his actions were called into question and the matter] went to trial.”⁵³

⁵² DoD Directive 3025.1 and 3025.15 grant commanders the authority to provide ‘Immediate Response’ to verbal requests from civil authorities. Approved immediate response actions include: rescue, evacuation, and emergency medical treatment of casualties; maintenance or restoration of emergency medical capabilities, and safeguarding the public health; emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel); emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services; recovery, identification, registration, and disposal of the dead; monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; roadway movement control and planning; safeguarding, collecting, and distributing food, essential supplies, and materiel on the basis of critical priorities; damage assessment; interim emergency communications; and facilitating the reestablishment of civil government functions.

⁵³ The senior Army Commander telling the story spoke at the School of Advanced Military Studies not for attribution following his return from Hurricane Katrina support. On 21 September 2005, Army LTG Honore warned reporters “don’t get stuck on stupid” during a nationally televised press briefing. LTG Honore was trying to get reporters to focus on information pertaining to incoming Hurricane Rita and stop obsessing about Hurricane Katrina response issues. Apparently, LTG Honore used the phrase in his headquarters before using it on television. According to an online article in *The Christian Science Monitor* by Patrik Jonsson on September 9, LTG Honore used the “stuck on stupid” phrase. The online article titled *A Native Son Takes Charge In Gulf Coast* is available at <http://www.csmonitor.com/2005/0909/p01s01-usmi.html> (28 December 2005).

Department of Defense Strategy for Homeland Defense and Civil Support

Disappointingly, the Department of Defense Strategy for Homeland Defense and Civil Support offers little additional insight into DoD's plan for defense support to civil authorities.⁵⁴ The one insightful piece of guidance it does contain is the published opposition to a dedicated civil support force in the active military. This current policy effectively removes from consideration one method to increase the Department's participation in disaster response. The strategy says, "with the exception of a dedicated command and control element (currently the Joint Task Force Civil Support) ...DoD will continue to rely on dual capable forces for consequence management and other support of civil authorities."⁵⁵ Eliminating the option to create special military troops for disaster response provides further impetus for defining exactly how the military supports civil authorities.

Sufficient Legislation in Place

The military needs no new authority to increase its participation in domestic disaster response. Suggesting changes to legislation such as PCA, HSPD-5, or the NIMS seems appropriate if the civilian leaders want a new role for the military in disaster response, but not necessary if they want greater armed forces participation. DoD leaders should understand that changing roles is hardly necessary to increase their services' participation given the latitude already present in current documents. To expand participation in domestic disaster response, the military should request elected leaders to be quicker to press them into service under existing legislation. There is no need to change existing legislation.

As early as today, the nation can realize more military assistance in disaster response without changing the military's present role or the authority given to it in current legislation.

⁵⁴ It is not until page 32 of 46 does the *Defense Strategy for Homeland Defense and Civil Support*, June 2005, discuss a strategy for civil support. The discussion ends on page 35. One additional section on civil support appears on page 39.

⁵⁵ DoD *Strategy for Homeland Defense and Civil Support*, June 2005, p.39.

With education in the relevant legislation that governs the military in domestic disaster response operations, DoD could institutionalize the same proactive approach many commanders took during Hurricane Katrina and garner the nation's confidence in its military's ability to alleviate domestic suffering. As a result, the debate surrounding changes to law would likely end, and the military could set off in earnest to expand its participation. Current legislation provides the military very broad operational boundaries because it defines the military's role as simply one of support to civil authorities. The nation should embrace this trust and together with the military explore its possibilities before seeking to change any legislation.⁵⁶

⁵⁶ For an opposing view that suggests the military needs more authority see the online article by Michael E. O'Hanlon, Senior Fellow, Foreign Policy Studies titled *Let Military Keep Order In Disasters* from The Baltimore Sun, October 6, 2005, online at <http://www.brookings.edu/views/op-ed/ohanlon/20051006.htm> (23 December 2005). He argues for lifting the posse comitatus restriction in response to catastrophes. He says that while National Guard forces already have the authority to maintain order they are slow to mobilize and that active-duty forces might be in the best position to respond quickly.

III. What Broader Role Could the Military Assume?

The military's role in domestic disaster response is to support civil authorities. Current legislation, specifically the Stafford Act, define an enormous domain of possible missions for the military. It does not seem appropriate yet to discuss adding new roles simply to increase its participation in disaster response. The American people need not necessarily consider new roles for the military, but they can demand greater domestic disaster response participation by the services under the role they have already authorized. In the current disaster response system, the military could do more without having its role change at all.

DoD may have created high expectations for future domestic relief operations. The Department would do well to assume that domestic disaster relief operations are now part of its primary mission.⁵⁷ DoD should expect citizens affected by future disasters to remember the Katrina relief effort and ask: "If DoD generated such a large force in a few days for Katrina, why wouldn't they provide the same level of support or more for this disaster?" Recall the many newspaper headlines that claimed Hurricane Andrew was the worst disaster ever until Hurricane Katrina. Will the next disaster be worse? The public may never again excuse DoD from participating in future disasters on anything less than Katrina's grand scale. DoD may be victims of its own success-too much of a good thing. Hurricane Katrina may well have been an anomaly, but the national disaster response planning of post-9/11 should have accounted for even a Katrina-sized event.

This section presents a summary of the current disaster response system, the military's contribution to Hurricane Katrina, and a few examples of many possible additional missions the military could assume immediately to better the federal component of the response effort. The examples at the end of this section serve as a first step in identifying ways to increase the armed

⁵⁷ According its website, DoD's primary mission is "to provide the military forces needed to deter war and to protect the security of the United States", http://www.defenselink.mil/pubs/dod101/dod101_for_2002.html (27 December 2005).

forces' participation in domestic disaster response without altering their current supporting role or adjusting current legislation. Whether its role changes or not, the military should openly communicate its operational capabilities and scope of participation to the various agencies that comprise the federal response apparatus. Unless Congress changes the military's role, the other agencies are the ultimate arbiters of federal aid.

The National Response Plan

The National Response Plan (NRP) is the nation's only comprehensive, full-spectrum, all-hazards approach to domestic incident management.⁵⁸ The NRP incorporates procedures from all components of the nation's incident management resources to form a common approach to solving the complex problems associated with crisis prevention, preparedness, response, and recovery.⁵⁹ Not surprising to a military planner, the procedures in the nation's response plan did not survive Katrina's response phase intact.⁶⁰ However, that should not discourage examination of how the military could do more within the federal response system. It is also worth mentioning that it would be unwise to scrap the NRP on account of its failure during Katrina, whose fury was such that it could have overwhelmed any new plan. As it was, the NRP never got a chance.

The principle purpose of the NRP is to facilitate coordination between response entities. The NRP defines an incident management concept of operations for the activities of the federal government, the state and local governments, the private sector, and non-governmental organizations (NGOs).⁶¹ The plan establishes conceptual procedures for vertical and horizontal communication that maximize integration and coordination between agencies, and facilitate rapid aid delivery in the event of a national crisis. The NRP provides the basis for both detailed

⁵⁸ The spectrum referred to in the 2004 National Response Plan are the many activities, including "prevention, preparedness, response, and recovery", executed before and after an incident. See NRP p. 2.

⁵⁹ The author uses the term 'complex' similar to the term described in Axelrod's *Harnessing Complexity*. Also see NRP, p.3.

⁶⁰ The Katrina-response postmortem analyses are not complete yet.

⁶¹ NRP, p.2.

supplemental or hazard-specific planning, and it is the basis for federal support of long-term community recovery. The document's major shortcoming is that it is not directive in nature and therefore cannot force compliance on any agency.

The NRP assigns federal departments and agencies lead or Emergency Support Functions (ESF) based on their congressional mandates and/or organic resources and capabilities.⁶² The NRP's ESF structure distributes recovery responsibilities, workload, and delivery of critical federal resources, assets, and assistance along what amount to logical military lines of operation.⁶³ Currently, the United States Army Corps of Engineers (USACE) is the only military component responsible for leading an ESF. The USACE is responsible for ESF #3, Public Works and Engineering. DoD is the only federal entity responsible for supporting every ESF, which it did during Hurricane Katrina relief efforts.⁶⁴

Roles and Responsibilities In the Nation's Response Plan

Federal departments and agencies derive their primary roles and responsibilities from the U.S. Code, and nothing in the NRP derogates those roles or responsibilities. The NRP does not change the DoD's role during national incident management. DoD's resource contributions and scope of support remain as directed by the President, to the Secretary of Defense, consistent with readiness and in strict adherence to applicable laws.⁶⁵ The NRP assumes that state and local governments will request assistance from the private sector, nongovernmental agencies, and

⁶² NRP, p.5. The 1992 Federal Response Plan (FRP) formed the basis for the 2004 National Response Plan. The FRP had 12 Emergency Support Functions (ESF) while the current NRP has 15.

⁶³ US Army FM 3-0 states "when positional reference to an enemy or adversary has little relevance, commanders may visualize the operation along logical lines... This situation is common in stability operations and support operations. Commanders link multiple objectives and actions with the logic of purpose—cause and effect... Multiple and complementary lines of operations work through a series of objectives. Commanders synchronize activities along multiple lines of operation to achieve the desired end state. Logical lines of operations also help ... visualize how ... means can support nonmilitary instruments of national power". FM 3-0, p.5-9.

⁶⁴ Figure 2 in the NRP's ESF's Annex section shows the ESF support and lead agency/department breakout. See NRP on page ESF-v for complete list.

⁶⁵ See previous monograph sections on the PCA, IA, Stafford Act and HSA.

federal departments and agencies when their own resources and capabilities are overwhelmed. State and local government officials are primarily responsible for the public safety and welfare of the people under their jurisdiction.

The NRP holds the state's governor responsible for coordinating local resources, encouraging state-to-state resource sharing, leadership, requesting federal assistance, and public safety. Under certain circumstances, a governor may have enhanced police powers and he may make, amend, and rescind orders and regulations. The governor of each state is designated the Commander-in-Chief of state military forces.⁶⁶

In accordance with each state's law, local government officials, commonly the mayors, have many of the same responsibilities as governors but only at a lower level.⁶⁷ Mayors may have extraordinary powers to suspend local laws and ordinances. Under state laws, local officials may establish curfews, direct evacuations, or direct quarantines as required to ensure public safety or welfare.⁶⁸

According to the NRP, NGOs and private sector organizations provide relief services to sustain life, reduce physical and emotional distress, and promote recovery of disaster victims. Their contributions and level of participation in incident management vary substantially from incident to incident. In certain instances, law governs their contributions and levels of participation.⁶⁹

⁶⁶ Paraphrased here, the federal government's interpretations of the governors' roles are on page 8 of the NRP. The NRP recognizes local military forces as specifically state authorized militias and state National Guard forces under Title 32 Status.

⁶⁷ Special local officials in Alaska called a tribal official has the same responsibilities as the local official, but may elect to deal directly with the federal government without reporting to a state governor. Alaskan Native Villages or Indian tribes/band/nations are the only communities who have officially recognized tribal leaders. NRP, p. 73.

⁶⁸ NRP, p.8.

⁶⁹ The NRP discusses these specific NGO and PVOs services on page 11. The American National Red Cross is an example of a Nongovernmental organization mandated by law to support relief efforts. 36 U.S.C. § 300102 mandates the Red Cross to "carry out a system of national and international relief in time of peace, and to apply that system in mitigating the suffering caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry out measures for preventing those calamities".

The NRP encourages weak leadership relationships among the federal agencies. As written, no single federal agency is ever actually permanently in charge of the whole disaster response effort. Instead, the NRP assigns management responsibility for only certain facets of the national response effort to those federal agencies who can best accomplish the management function. The national plan states that federal departments or agencies may assume primary, coordinating, and/or support roles based on their prescribed duties, available resources, and the nature of the incident.⁷⁰ The NRP never grants directive authority to any agency over any other. Amazingly, under this construct agencies are free to follow or reject the suggestion of an appointed lead management agency. Absent specific task compliance or any enforcement mechanism, it is a wonder that agencies in this system cooperate at all. Under this system, the military can choose to do any missions the Secretary of Defense allows as long as those missions are legal.

During incident management, federal agencies assigned a primary management responsibility participate in the national incident-management leadership structure. The agencies' officials may participate as a Senior Federal Official (SFO) or Senior Federal Law Enforcement Official (SFLEO) in the Joint Field Office (JFO) Coordination Group at the field level, and as part of the Interagency Incident Management Group (IIMG) and/or Homeland Security Council (HSC) Policy Coordination Committees (PCC).⁷¹ Some federal agencies with jurisdictional

⁷⁰ NRP, p. 10.

⁷¹ **Senior Federal Official (SFO).** An individual representing a federal department or agency with primary statutory responsibility for incident management. (NRP, p. 22). **Senior Federal Law Enforcement Official (SFLEO).** (NRP, p. 22) The SFLEO is the senior law enforcement official from the agency with primary jurisdictional responsibility as directed by statute, Presidential directive, existing federal policies, and/or the Attorney General. The SFLEO directs intelligence/investigative law enforcement operations related to the incident and supports the law enforcement component of the Unified Command on-scene. (NRP, p.35). **Joint Field Office (JFO) Coordination Group.** The JFO Coordination Group functions as a multiagency coordination entity and works jointly to establish priorities (single or multiple incidents) and associated resource allocation, resolve agency policy issues, and provide strategic guidance to support federal incident management activities. The exact composition of the JFO is dependent on the nature and magnitude of the incident. (NRP, p. 33). **Interagency Incident Management Group (IIMG)** The IIMG is a federal headquarters-level multiagency coordination entity that facilitates strategic federal domestic incident management for Incidents of National Significance. (NRP, p. 17). **Homeland**

authority and responsibility may also participate in the Unified Command at the Incident Command Post (ICP)⁷². Emergency Support Functions (ESF) annexes in the NRP define default lead and supporting relationships for federal agencies.⁷³ A full or partial activation of the NRP's ESF structure is a common precondition for the federal response to Incidents of National Significance.⁷⁴

The Plan's Incident Management Concept of Operations

The NRP holds that incidents should be contained at the lowest jurisdictional level possible. Each state has existing legislation and internal emergency preparedness and response procedures that govern its incident management activities. Each state has a dedicated office to assist the governor in conducting incident management. Once a disaster occurs, the governor is responsible for issuing all local orders, declaring states of emergency and for ensuring subordinate jurisdictions adhere to state emergency procedures. The state plans require that each subordinate jurisdiction utilize their own facilities, equipment, supplies, personnel, and resources first. Not all states' plans are the same.

When local resources are inadequate, local executives may request assistance from progressively larger political subdivisions and, ultimately, the state government. The Governors

Security Council (HSC). The HSC is responsible for interagency policy coordination regarding domestic incident management as directed by the President. (NRP, p. 22). **Policy Coordination Committees (PCC).** PCCs are emergency committees convened at the request of member agencies to coordinate policy issues as part of the White House process. (NRP, p. 22).

⁷² A **Unified Command** is a leadership body composed of representatives from all agencies with jurisdictional authority or functional responsibility for any or all aspects of an incident and those able to provide support. This group provides guidelines to enable agencies with different legal, geographic, and functional responsibilities to coordinate, plan, and interact effectively. The group's exact composition depends on the type of incident and its physical location (relative to which geographic jurisdictions exist). NIMS, p.26. The **Incident Command Post (ICP)** houses the tactical-level, on-scene incident command and management organization. The ICP is typically comprised of designated incident management officials and responders from federal, state, local, and tribal agencies, as well as private-sector and nongovernmental organizations. When multiple command authorities are involved, a Unified Command may lead the ICP. NRP, p.39.

⁷³ The ESF annexes detail the missions, policies, structures, and responsibilities of federal agencies for coordinating resource and other support to States, and other federal agencies during incidence management. NRP, p.xi.

⁷⁴ NRP, p.11.

dedicated emergency office accepts and prioritizes requests for assistance from subordinate jurisdictions and then allocates state resources to manage the incident. One of the most robust assets governors have is their National Guard. The governor is the titled commander of his or her Army and Air National Guard. Unlike most senior military commanders, governors widely differ in their experiences working with their state's troops.

State governors have the power to order the National Guard to conduct operations in their state, or others, as they deems appropriate to the crisis.⁷⁵ The National Guard routinely supports incident management operations. The National Guard is a particularly attractive incident management resource because it shares virtually all the same operational characteristics and equipment as active forces but is not subject to the same legal restrictions.

If a local emergency or disaster exhausts the management capability and emergency resources of state and local governments and that state wants federal assistance, the Governor is supposed to request assistance from the President. First, the Governor must formally request the President declare a major disaster or emergency. Next, the Governor must request specific resource assistance before the federal government commits any assets. The Governor generally makes both requests simultaneously though the Department of Homeland Security to the President. DHS delegates responsibility for most emergency management activities to the Federal Emergency Management Agency (FEMA). Federal support to the states falls into three broad categories: situation assessments, communications and response management.

The NRP and NIMS systems as just described only partially functioned during Hurricane Katrina relief. This partial failure of the response system created a niche for the military. Specifically, the NRP's tidy and tiered request system from state and local officials to FEMA

⁷⁵ Virtually all states have some form of mutual support agreements. These agreements conceptually commit some state's assets to support a neighboring state in the event of a major crisis. The author found no uniformity in the agreements researched for this monograph. For more information on state to state assistance see the Emergency Management Assistance Compact website (<http://www.emacweb.org/>). This organization provides form and structure to interstate mutual aid.

broke down immediately, leaving the military in the position to wait for FEMA directives or solve whatever problems came its way. State and local officials, the ones that normally should make requests to FEMA, physically could not move around the battered region to assess precisely what they needed from the federal government. Nor could these leaders forward many of their needs to FEMA because of poor or nonexistent communications infrastructure in the region. FEMA, suffering from its own lack of manpower and mobility, still managed to establish most of the NIMS and NRP mandated coordinating mechanisms and then began processing local requests. Given its small size, limited ability to communicate, and lack of authority, FEMA did all it could to bring together requests from local governments with providers in the ever growing federal pool. Without FEMA's coordination mechanisms, the entire relief effort could have easily degenerated to an ineffective *repair-service* model with no hope of ever transitioning from response to recovery.⁷⁶

Military Operations during Hurricane Katrina

The military's response to Hurricane Katrina was the largest and fastest in U.S. history – tens of thousands of members in less than a week. Their mission was to conduct “disaster relief efforts associated with hurricane Katrina; in order to save lives, mitigate human suffering and restore critical services. On order, [transfer] DoD relief operations to civil authorities.”⁷⁷ Because of the military's quick arrival and broad mission authorities, early disconnects with

⁷⁶ For a discussion of repair-service behavior and the dangers of using it as a problem solving methodology see Dietrich Dorner's *The Logic Of Failure-Why Things Go Wrong And What We Can Do To Make Them Right*. Trans. By Rita and Robert Kimber. New York: Henry Holt & Co., 1996, pp. 58-60. Dorner says that when people exhibit this behavior they search for things they believe are malfunctioning and once they find them their immediate goal becomes fixing whatever they find broken. Two relevant consequences of this type of behavior are that the wrong problems usually get solved and the consequences borne of solutions to today's problems remain invisible.

⁷⁷ From a September 6th Commander Fifth United States Army briefing obtained by the School of Advanced Military Studies (SAMS) during Hurricane Katrina relief operations titled *Hurricane Katrina Fifth Army Commander's Assessment*. Digital copy of this briefing is on file with SAMS.

federal, state and local authorities plagued its initial contribution. Like it or not, support for Hurricane Katrina created an expectation that the military will be there when it civilians need it.

The military began implementing alert and deployment procedures even before Katrina made landfall in the hardest hit state, Louisiana. Most DoD resource deployments began after President Bush declared a state of emergency on 30 August.⁷⁸ FEMA executed the National Response Plan on August 31, fully mobilizing federal resources in support of the entire region but focused mainly in Louisiana and, more specifically, New Orleans. NORTHCOM activated Joint Task Force–Katrina (JTF–K) on August 30 and by 8:55 PM that night the Corps of Engineers began repairing the hole in New Orleans’ 17th Street levee. Also on 30 August 30, the amphibious warship *USS Bataan*, positioned near New Orleans prior to Katrina making landfall, began relief operations and DoD ordered additional ships and helicopters to the region. On August 31, the New Orleans’ leadership ordered its 1,500-member police force to abandon search and rescue missions and instead attempt to stop the widespread looting and civil disobedience. Mayor Ray Nagin called for increased federal assistance as National Guard troops from around the region continued to arrive. As the situation in New Orleans continued to deteriorate, DoD ordered additional active duty ground troops, including elements of the Army’s 82nd Airborne and 1st Cavalry Divisions and elements of 1st and 2nd Marine Expeditionary Forces. By September 7, DoD had 42,990 National Guard members, 17,417 active duty personnel, 21 ships (including one aircraft carrier), 360 helicopters, and 93 fixed-wing aircraft in the affected area.⁷⁹ DoD’s impressive force contribution to the Katrina relief effort did not go unnoticed.

⁷⁸ Some very early DoD assets like the Air Force Reserve’s 53rd Weather Reconnaissance Squadron began flying hurricane Katrina support missions weeks in advance of her landfall. The Air Force Reserve’s 53rd Weather Reconnaissance Squadron, known as the Hurricane Hunters, is the only Department of Defense organization that flies into tropical storms and hurricanes—which it has been doing since 1944. This DoD organization conducts scientific data collection for the National Weather Service. See <http://www.hurricanehunters.com/welcome.htm>, (23 December 2005) for more information.

⁷⁹ Data compiled from various online sources including Wikipedia, http://en.wikipedia.org/wiki/Timeline_of_Hurricane_Katrina, University of Southern California's Online Journalism Review, http://www.ojr.org/ojr/wiki/Katrina_Timeline/, and the Brookings Institute, <http://www.brookings.edu/fp/projects/homeland/katrinatimeline.pdf> (all 23 December 2005).

DoD performed almost all of the missions allowed in the Stafford Act during Hurricane Katrina relief. DoD evacuated over 4,000 special needs patients from Texas and Louisiana to other locations all over the country prior to the storm. DoD aircraft did damage assessment, search and rescue, aerial imagery, movement of critical supplies, medical evacuation and even air-dropped supplies to citizens in need. DoD initially cleared, opened, and manned many of the essential local airfields in the affected area. USACE and other DoD units in close coordination with FEMA, state, and local officials aggressively repaired levees, bridges, power infrastructure and cleared roads.⁸⁰ Paratroopers and Marines conducted ground search and rescue operations, humanitarian relief efforts and evacuation of displaced citizens in New Orleans, sometimes even from rubber boats.⁸¹ DoD established and guarded many food, water, and fuel distribution sites that would have otherwise been left vulnerable to pilfering. DoD mortuary affairs teams assisted local effort to process the remains of victims.

In a zealous attempt to alleviate suffering within the bounds of the Stafford Act, the military's actions, often uncoordinated with FEMA, may have complicated overall relief efforts. For example, Philip Parr, a FEMA official at the Superdome in New Orleans, testified to Congress that military officials delayed his planned evacuation of Hurricane Katrina victims from the overcrowded sports arena. He claimed the delay prolonged the victims' stay inside the rancid Superdome for another 24 hours. On Wednesday, 31 August, Parr planned to use helicopters and then buses to evacuate victims to other shelters. Parr said National Guard officials told him that LTG Honore had taken over evacuation operations and Parr's plan was on hold. On Thursday, 1 September, FEMA and state officials began evacuating victims from the Superdome via bus. The entire Superdome evacuation took four days to complete.⁸² Apparently, the military's efforts

⁸⁰ <http://www.vnis.com/story.cfm?textnewsid=1683> (24 December 2005).

⁸¹ <http://www.military.com/NewsContent/0,13319,77728,00.html> (23 December 2005)

⁸² Superdome evacuation account from a *CongressDaily* article on December 8, 2005 titled *FEMA Officials: Military Delayed Superdome Evacuation*, by Greta Wodele, available online at <http://www.govexec.com/dailyfed/1205/120805cdpm1.htm> (24 December 2005).

often frustrated FEMA because Scott Wells, FEMA coordinating officer for Louisiana during Katrina, later said, “Having DOD is like having an 800-pound gorilla. You're supposed to be responsible for it, but that 800-pound gorilla’s [sic] going to do what he wants to do, when he wants to do it and how he wants to do it!”⁸³

No rational observer who witnessed the military in action during Katrina could fault its proactive approach to reduce suffering. Perhaps because they did not know or agree with the national system, or simply because military members have a tendency to ferret out and solve problems, commanders did their own needs assessments wherever they were. In many cases, because they had sufficient workers, supplies, and mobility, the military organizations could assess, prioritize, and begin work on relief projects long before FEMA formally processed the local need. The federal government should fully consider using the military’s current capability to move generally unimpeded by a disaster and to plan and control response operations before considering new roles for it.

How the Military Could Do More

Obviously, the bigger the disaster, the bigger the military’s participation should be in supporting relief efforts. An academic paper that explicitly prescribes how much the military should contribute to each disaster would be both presumptuous and dangerous. Presumptuous because determining the amount of military contribution certainly depends on conditional factors such as the severity of the particular disaster, available resources based on other global commitments, political factors, and other issues that require analysis on a case-by-case basis. Dangerous because should the military agree to any commitment it cannot fulfill even in times of global conflict, guarantees either disaster response or global engagement will suffer. It is appropriate to suggest additional missions for military consideration that would benefit future

⁸³ From a December 8, 2005 NBC online news article titled *FEMA State Managers Testify Regarding Katrina Response* found online at <http://www.wistv.com/Global/story.asp?S=4221126&nav=0RaP> (10 December 2005).

response efforts while leaving the military in its current support role. The military can do even more than it did in Katrina to support future relief efforts but only if it is willing to trespass on what some would have otherwise considered civilian missions.

Preliminary Damage Assessments

In the early stages of a disaster, both local and federal officials expend vast amounts of resources conducting damage assessments in what FEMA calls joint preliminary damage assessment teams. Composed of multidiscipline local and federal officials and transported commonly by wheeled vehicle, assessment teams take tours into the affected area soon after, or even during, a disaster to survey the extent of the damage. Team members collect specific data that their particular agency then uses to help allocate their limited resources to the overall relief effort.⁸⁴ Earnest and effective relief work cannot begin until at least the preliminary assessments are complete.

Regardless of the specific data collected by all the various agencies, some information is always important to all teams. In New Orleans, for example, information about road conditions proved essential for all agencies that relied on driving to render aid. Obviously, if a disaster damages the road network, the preliminary assessment teams must use other means of transportation. In most situations in New Orleans, the damage assessment teams used a combination boats or aircraft, many of which DoD and the Coast Guard provided. When post-disaster conditions preclude civilian agencies driving themselves, the military could assume the mission of conducting preliminary damage assessments.

What FEMA calls preliminary damage assessments, the military calls reconnaissance. The DoD dictionary defines reconnaissance as a mission using observation or other methods to

⁸⁴ Many of the agencies doing preliminary assessments have little to do with the actual response. Many contracted agencies were observed doing assessments in the affected area. These teams focused on assessing the damaged areas not with an eye toward allocation of response assets, but instead to inform proposals for later reconstruction efforts. Various insurance companies surveyed the damaged areas to ascertain for themselves what they would and would not cover.

“secure data concerning the meteorological, hydrographic, or geographic characteristics of a particular area.”⁸⁵ Because situational understanding is such an integral part of all military decision making processes, every service has and continues to improve its reconnaissance capabilities. In the Army, for example, most brigades have or will soon have organic tactical unmanned aerial vehicles to compliment the vehicles and dismounted troops already performing ground reconnaissance. Whether transmitted digitally or via radio, the military enjoys a robust capability to analyze and disseminate information gained from reconnaissance.

The DoD could greatly increase its participation in the next disaster if it were to conduct most or all of the preliminary damage assessments for FEMA. The military would need little training to conduct these preliminary assessments because it already trains to perform similar missions in combat. Certainly, for future disasters like hurricane Katrina, the military is the only federal organization with the organic assets capable of guaranteeing it can accomplish the mission.

‘Light’ Urban Search and Rescue

Another possible use for the military’s ability to move unimpeded by the effects of terrain is to have the military provide FEMA a robust ‘third tier’ urban search and rescue (US&R) capability. FEMA should expect this capability from DoD in response to every disaster. The nation has twenty-eight specially trained, equipped, and certified, rapidly deployable US&R teams--consider these the top tier of urban search and rescue capability.⁸⁶ Several local

⁸⁵ DoD’s online definition of reconnaissance available at <http://www.dtic.mil/doctrine/jel/doddict/data/r/04440.html> (28 December 2005).

⁸⁶ The nation currently only has twenty-eight certified urban search and rescue teams dispersed around the country--the top tier of urban search and rescue. These FEMA certified disaster response task forces are local emergency services units with special training, equipment, and the demonstrated capability to fully deploy within two hours of notification. Generally, FEMA deploys these very special task forces only to rescue victims of structural collapses. However, because FEMA needed their capabilities, 19 of the teams were deployed to the Gulf Region in response to Hurricanes Katrina and Rita. In Louisiana, the teams conducted two types of search: primary and secondary. The hasty primary searches were visual, with hailing calls, as searchers moved through damaged areas. Search teams generally did not force entry

jurisdictions around the country have search and rescue teams that do not meet FEMA's stringent US&R certification criteria mainly because they cannot deploy outside a limited region, nor can they sustain themselves--consider these the second tier US&R units.

Hurricanes Katrina and Rita nearly exhausted the national US&R system. For example, 19 of the 28 top tier US&R teams deployed to support the relief effort. Louisiana consumed all but four of these teams. Even with more than half of the nation's elite search and rescue assets deployed to the state, FEMA still required DoD and other federal agencies' resources to search all of New Orleans, since much of the city was under water. During Katrina, the military demonstrated an innate ability to do urban search and rescue in coordination with FEMA certified teams.

The military's third-tier search and rescue capability would only augment the other two tiers, not replace them. The military should guard against trying to reproduce the same level of sophistication as possessed by the full-time US&R teams, agreeing instead to conduct large-area preliminary searches of damaged urban areas. With the military firmly committed to conducting initial searches, the special teams could focus on searches that are more detailed or require their special expertise. Some may say combat forces are ill suited to do these types of search missions. But skeptics should consider what MG William B. Caldwell IV, the 82 Airborne Division's commanding general said after Katrina, "We eventually became the 82nd 'Waterborne' Division and [search and rescue] really was our forte."⁸⁷

into structures during these searches. Secondary searches were door to door in affected areas where flooding had occurred higher than 5.5 feet above the floor. The Katrina Unified Search and Rescue Command directed teams from 15 states: California, Colorado, Florida, Indiana, Maryland, Massachusetts, Missouri, Nebraska, New York, Pennsylvania, Tennessee, Texas, Utah, Virginia and Washington. FEMA controlled an additional four task forces in Louisiana for Hurricane Rita: Arizona, Nevada, Ohio, and Tennessee. All search and rescue data from an online news release titled *Urban Search And Rescue Operations Completed, Hurricane Katrina Urban Search and Rescue Teams Are Due to Return Home* available at <http://www.fema.gov/news/newsrelease.fema?id=19320>, were published on September 30, 2005, Release Number: 1603-054 (26 December 2005).

⁸⁷ Gerry J. Gilmore, *82nd Airborne Division Becomes 'Waterborne' in New Orleans* American Forces Press Service, September 21, 2005, online at http://www.defenselink.mil/news/Sep2005/20050921_2804.html, (26 December 2005). See the September

Command Post Training

The National Incident Management System (NIMS) calls for the temporary establishment of various multi-agency coordination entities that form immediately before and after a disaster to manage the response and recovery of the event.⁸⁸ In the National Response Plan, only under very rare circumstances does one single agency provide all the personnel for any one particular coordination entity. Instead, a multi-agency, multi-disciple staff whose overall size varies in proportion to the scope of its management responsibility runs each coordination entity. Regardless of the coordination entity's size or specific management responsibilities, one function they all share is maintaining appropriate situational awareness and resource status information.⁸⁹ Unfortunately, the federal government does not offer civilians any standard training to teach individuals how to work in these coordination entities. During Katrina relief operations, the lack of standardization meant civilian coordination entities suffered from poor situational awareness and struggled to maintain resource status information. Because it already has standard training programs, the military could provide formal command post training to civilian personnel to increase their collective ability in these areas.

During Katrina, even the largest and best-equipped coordination entities found maintaining appropriate situational awareness and resource status information very difficult. For example, the central federal coordination entity during Hurricane Katrina was the Joint Field Office (JFO) in Baton Rouge. The JFO in Baton Rouge grew to approximately 1,912 people,

19, 2005 article by the same author, *Army Paratroopers Keep Watch Over New Orleans Neighborhood* at http://www.defenselink.mil/news/Sep2005/20050919_2793.html (26 December 2005).for more information on paratroopers conducting urban search and rescue.

⁸⁸ Emergency Support Function # 5 (ESF-5) provides the core management and administrative functions for all multi-agency coordination entities which involve the federal government. NRP, ESF 5 Annex.

⁸⁹ NIMS, pp. 28-29.

including FEMA officials, other federal and state employees, and local hires.⁹⁰ Even with a large staff, the accuracy of resource status information ranged from nonexistent to pitifully inaccurate, partly because of the lack of consistent individual training.⁹¹ One military officer in the JFO later concluded that individuals in the JFO appeared disjointed and appeared to have no idea how to share an accurate accounting of the current actions or geographic locations of their agency's resources. It appeared that each agency representative managed information differently.⁹² Had the JFO personnel received formal training they would have been better able to communicate adequate, if not quality, resource-status information with each other in a meaningful fashion.

The military invests heavily in formal professional training to better prepare individuals to work in coordination entities known as command posts.⁹³ Although each service operates their command posts slightly differently, adherence to a joint doctrine ensures they all operate in a relatively standard fashion. The NIMS is the closest document to doctrine that the federal and state governments share. Even strict adherence to the NIMS offers little useful information that would help anyone establish its suggested coordination entities. Validated by the daily operations

⁹⁰ JFO's size from the Louisiana Weekly's October 15, 2005 online article titled *Ask FEMA Update* available at <http://www.louisianaweekly.com/weekly/news/articlegate.pl?20051017r> (28 December 2005).

⁹¹ Many responding agencies undermined the NIMS's command structure by reporting directly to the state emergency operations center (EOC) instead of the JFO. During Katrina, James Lee Witt and Associates, LLC (a corporate consulting firm) essentially ran the Louisiana EOC. One wonders what incentives this company would have had reporting any assets they received to FEMA, when reporting these assets to FEMA may have caused FEMA to divert those assets outside the state. For an account of bypassing the JFO see the online report by the California Department of Forestry and Fire Protection at http://www.fire.ca.gov/php/fire_er_katrina.php (29 December 2005).

⁹² Assessment JFO's situational awareness and resource status information from a December 29, 2005, interview with an active duty US Army field grade officer assigned to support FEMA from inside the actual JFO. He provided this information under the SAMS Non-attribution Policy.

⁹³ All Services have professional military education systems that, among other things, repeatedly train staff skills. While all Services have staff training embedded in their various education systems, the Army, Air Force and Marines have the most formal staff training programs. The Army teaches staff skills at: the various Non-Commissioned Officer (NCO) Education System schools, the Command and General Staff College, the School of Advanced Military Studies, the various Officer Advanced Courses, and in NCO Battle Staff Courses. The Marine Corps trains staff skills at their Expeditionary Warfare School, Command and Staff College, School of Advanced Warfighting, and the NCO's Advanced Courses among others. The Air Force teaches staff skills at the Air Command and Staff College, Squadron Officer College, School for Advanced Air and Space Studies, Air Force Officer Accession and Training Schools among others.

in many countries of the world today, military command posts certainly have the ability to manage situational awareness and resource status information.⁹⁴ While some may believe the military command post model is not the ideal solution for the federal and state coordination entities, perhaps it is worth considering as a point of departure for a new civilian model if not adopted as it. There exists training programs for it and the military should make them available.

The military should actively export their staff training to federal and local disaster emergency response agencies. At the department level, DoD should actively encourage civilian emergency personnel attendance at military schools that teach staff skills. The military training would at least provide the civilians from various agencies a common basis in the operation of a command post/coordination entity. The lower cost associated with using the military's existing training program versus establishing a new one ideally suited for civilians should make this an attractive proposal for the civilians. The military could increase its participation in disaster response by exporting staff training to civilian agencies before an event and providing already trained military staffs to augment civilian agencies after an event.

With a Little Help From Its “Friends”

The military can increase its participation in domestic disaster response without having its original role change at all. The military could increase its participation in disaster response by assuming new missions previously not undertaken for fear, perhaps, of violating the law or established response procedures. Given its vast and ready resource and manpower pools, the military should reflect on the enormous opportunity to participate in disaster response afforded it

⁹⁴ On March 4, 2005, the United States Central Command (CENTCOM) had over 350 battalion-sized or larger headquarters physically assigned to it in Kuwait or Iraq. Nearly all of these headquarters contributed daily resource status information to CENTCOM. At the time of this writing FEMA had yet to verify for the author the exact number of organizations it 'managed' during Katrina. Through personal observation, the JFO collected information from at least as many federal, state, and local coordination entities as CENTCOM did headquarters during OIF. Number of headquarters units involved in Operation Iraqi Freedom data from http://www.globalsecurity.org/military/ops/iraq_orbat_toe.htm (31 December 2005).

in the broad range of its duties in the Stafford Act, NRP, and NIMS. Really, the military's only limitation to an increased participation is its ability to gain acceptance and its own willingness to participate. The military does not require a new role. It requires a new will to participate. Katrina showed what a few motivated commanders could accomplish even with the current obstacles. Formalizing their concept of active participation, along with appreciation of their support role, will serve the nation in future disaster response efforts.

IV. Why Shouldn't DoD Become The Lead Response Agency?

On September 25, 2005, the President asked Congress to determine for themselves whether a sufficiently large natural disaster would require the Defense Department to become the lead agency in coordinating and leading the response effort.⁹⁵ The simple answer to the President should be “yes”, but only in the event of the complete collapse of both the federal and local governments. But excepting the low probability that an event would entirely disable both systems simultaneously, the more appropriate answer to the President’s question is “no”. Short of a complete collapse of federal and local government systems while miraculously leaving the military intact, there is nothing that would warrant the military leading a domestic disaster response.

Some people would disagree. They would argue that the agency providing the preponderance of assets should lead the disaster response. Others would argue that with DoD’s large, full-time, disciplined, well-organized, workforce, the military appears to have the ideal organizational structure to lead the response. Those are valid arguments. Why shouldn’t DoD become the lead agency in coordinating and leading the response effort?

In Katrina’s aftermath, many questioned FEMA’s ability to respond to disasters. FEMA attributed its poor response to budget and work force cuts. The cuts came as a direct result of their integration into the Department of Homeland Security in 2002.⁹⁶ This explanation would imply that if the government cannot or will not return FEMA to its pre-integration size or make it larger, responsibility for domestic disaster response should fall to another agency. Logically then, since DoD has the largest budget and work force in the federal government, perhaps DoD should

⁹⁵ The President’s asked Congress to determine if “there [existed] a natural disaster which -- of a certain size that would then enable the Defense Department to become the lead agency in coordinating and leading the response effort” available on line at <http://www.whitehouse.gov/news/releases/2005/09/20050925.html> (31 December 2005).

⁹⁶ For a brief explanation of what budget cuts did to FEMA after September 11 and how that impacted their ability to manage Katrina see the online article, *Why FEMA Was Missing In Action*, from the online edition of the *LA Times* at <http://www.latimes.com/news/nationworld/nation/la-na-fema5sep05.0,685581.story?coll=la-home-headlines> (1 January 2006).

lead emergency management. Assuming it were possible, the fact is DoD lacks many attributes that would make it a suitable candidate for disaster response lead agency.

DoD Has Limited Resident Incident Management Experience

Repeated experience with actual incident management is essential to develop disaster response decision-making abilities in leaders. Not unlike military commanders on the battlefield, effective incident management requires local officials to understand the dynamic nature of the situation they face, be able to arrange the simultaneous and sequential activities of their subordinates, and identify requirements for outside assistance. Currently, no mandatory incident response-training program exists for local officials or their staffs. Absent a formal training program, individual abilities, local budgets, and most importantly actual experience leading disaster response operations determine local government's ability to integrate assets into an effective relief effort. Some academics believe experience forms a basis for sound crisis decision-making. It follows that local government entities with little incident management experience would make less than optimal incident management decisions.⁹⁷ Prior to Katrina, Florida Governor Jeb Bush had led fourteen federally declared major disaster relief operations, of which seven were caused by hurricanes. On the other hand, Louisiana Governor Kathleen Blanco had led only two such operations, of which only one was hurricane related.⁹⁸ When compared to Governor Bush's post-Katrina actions, many people criticized Governor Blanco's incident

⁹⁷ In *Sources of Power-How People Make Decisions*. Massachusetts: The MIT Press, 2001, pages 16-74 the author, Gary Klien, discusses various decision-making models that depend on experience to determine the best course of action in a given situation. Pattern recognition forms a basis for effective crisis decision making.

⁹⁸ Data from FEMA's Disaster archives available online at <http://www.fema.gov/library/drcys.shtm>. Florida's Governor Bush, elected in 1999, led federally declared major disaster response efforts for hurricanes, Floyd, Irene, Charley, Frances, Ivan, Jeanne, and Dennis. Louisiana Governor Blanco, elected in 2004, led the recovery effort for hurricane Ivan. According to the online encyclopedia Wikipedia, hurricane Ivan, a category 5 hurricane, killed 92 Americans nationwide. Hurricane Katrina, which hit LA as a category 4 hurricane, killed over 1,000 citizens in Louisiana alone. Katrina death tolls available online at http://en.wikipedia.org/wiki/Hurricane_katrina. Details on hurricane Ivan available online at http://en.wikipedia.org/wiki/Hurricane_Ivan. Neither governor was in office during hurricane Andrew in 1992. (Both 1 January 2006).

management decision-making ability. Most professional local and federal incident managers rise through their own ranks and gain repeated exposure to incident management. Unless the military were to dedicate forces to long-term incident management, it would risk having inexperienced leaders manage disasters. This has proven a recipe for failure or at best success tempered by much criticism.

DoD has little incident management leadership experience. As a matter of policy, DoD relies on dual capable forces for consequence management and other defense support to civil authorities. The active military does not mandate widespread domestic incident management training. Only the few members who support state officials and/or the National Guard, in positions such as Emergency Preparedness Liaison Officers or some active-component reserve-force trainers, receive any training in disaster incident management. Absent a training program, the first exposure many active military members get to the national incident management system and the members' federal and state peers' agencies comes during an actual incident. Because disasters occur infrequently and they spend only a few years in each assignment, few military members ever participate in more than a few disaster responses in their career and almost never in the same capacity. Further, other than asking each individual member, there is no universal way to identify active military personnel who have ever participated in disaster relief operations. The military has no universal disaster-experience special skill identifier. In order for the military to leverage previous incident management experience, it would have to develop a new system to catalog each member's disaster response participation. Some believe because DoD is so large it has some standing capacity for disaster response.

The active component retains relatively little standing civil support capability and many people assume its capabilities are greater than they truly are. USACE and the Joint Task Force Civil-Support (JTF-CS) are the only standing disaster response organizations on active duty in DoD today. USACE has approximately 34,600 civilian and 650 military engineers, scientists and other specialists who concern themselves with all matter of national-level engineering and

environmental matters.⁹⁹ Their primary mission is to provide engineering services to the nation including: planning, designing, building and operating water resources and other civil works projects, military construction, as well as design and construction management support for other Defense and federal agencies. Although USACE manages large construction projects, civilian contractors do the actual work. Local communities task the manpower and equipment without Army intervention.¹⁰⁰

JTF-CS, which is part of NORTHCOM, exists to “save lives, prevent injury and provide temporary critical life support during a chemical, biological, radiological, nuclear or high-yield explosive (CBRNE) situation in the United States, its territories, and possessions.” A federalized Army National Guard General Officer commands the 160-person task force comprised of civilian personnel, active, reserve, and Guard members from all services and the Coast Guard. JTF-CS is a command and control organization not a maneuver force. The task force plans and integrates DoD support to the designated lead federal agency for domestic consequence management operations during CBRNE incidents.¹⁰¹ JTF-CS would need significant expansion in both manpower and mission scope before it were capable of assuming any lead role.

⁹⁹ During incident management, USACE is the lead federal agency responsible for Emergency Support Function # 3 – Public Works and Engineering. In this role, USACE assists, coordinates and organizes “the capabilities and resources of the federal government to facilitate the delivery of services, technical assistance, engineering expertise, construction management, and other support to prevent, prepare for, respond to, and/or recover” from incidents of national significance. U.S. Army Corps of Engineers information from their website at <http://www.usace.army.mil/who/#Organized> (5 December 2005). Additional information about Emergency Support Function #3 is available in the National Response Plan, December 2004, pp. ESF 3-1 to 3-8. NORTHCOM has other civil support organizations dedicated to missions other than domestic incidence management. For more information on NORTHCOM’s support to civil authorities, see U.S. Library of Congress. *Homeland Security: Establishment and Implementation of the United States Northern Command*. Report for Congress by Scott Shepherd and Steve Bowman. February 10, 2005. CRS report number 21322 is available online at <http://www.fas.org/sgp/crs/homesec/RS21322.pdf> (5 December 2005).

¹⁰⁰ Schrader, *The Army’s Role in Domestic Disaster Support*, p. 16.

¹⁰¹ NORTHCOM Joint Task Force Civil Support (JTF-CS) is a command and control headquarters only. Although staffed by experts, it is too small to assume the CBRNE mitigation mission. JTF-CS is limited to actions permissible under the Stafford Act. The Task Force’s mission and other details are available online at <http://www.jtfcs.northcom.mil/index.html> (December 5, 2005).

FEMA and its professional employees, on the other hand, have a rich disaster response history. President Carter's 1979 Executive Order 12148 established this agency as an independent federal entity charged with establishing and coordinating all civil defense and civil emergency planning, management, mitigation, and assistance functions of the government's executive agencies.¹⁰² Almost immediately, FEMA began responding to many serious and complex incidents. Early on, it responded to a toxic cleanup, the Cuban refugee crisis, and the accident at the Three Mile Island nuclear power plant. Later, this still relatively new organization coordinated responses to incidents like the Loma Prieta Earthquake and only became the focus of national attention after Hurricane Andrew. Like other professionals, FEMA employees remain in their job for years and progress based on experience. Like in the military, they progress only after demonstrating a potential for additional responsibility. For FEMA, this occurs during actual incident management.

Although normally a small organization, FEMA can grow to meet the needs of the emergency at hand. Normally, FEMA has 4,858 salaried employees of which over 2,500 are full-time employees dedicated to disaster response. In the event of a major disaster, FEMA draws supplemental middle management and senior-level employees from a pool of over 5,000 stand-by reservists distributed across the country.¹⁰³ FEMA's actual total work force varies widely based on the incident. For example, a news service reported FEMA's August 8, 2005, workforce numbered 20,287, which, according to the report, had grown from 8,388 on September 22, 2001 in support of Hurricane Katrina operations.¹⁰⁴ For most of the FEMA employees, Katrina was not their first or even fifth incident.¹⁰⁵

¹⁰² From Presidential Executive Order 12148 available online at <http://www.archives.gov/federal-register/codification/executive-order/12148.html>.

¹⁰³ FEMA workforce data from the Homeland Security *Budget-in-Brief for Fiscal Year 2006*, p.57, available on line at http://www.dhs.gov/interweb/assetlibrary/Budget_BIB-FY2006.pdf.

¹⁰⁴ The online article in the Boston Globe titled *FEMA Budget So Complex It Defies Consensus*, by AP writer Randolph E. Schmid written on September 24, 2005, reports that FEMA's wildly changing size is part of the challenge associated with understanding FEMA's budget. The article explains that

There is no substitute for actual experience leading disaster response. DoD dedicates very little full-time manpower to civil support operations and less to lead incident management functions. By contrast, that is all some agencies do. Unless DoD changes its dual-use force policy, dedicates considerable manpower to incident management, and finally creates a systemic way to develop and catalog incident management experience in its members, it seems unlikely it could effectively manage incidents better than the professionals.

DoD's Organizational Structure is Suboptimal for Managing the NRP

If one agrees that the military should not lead the entire disaster response effort because ultimately that is better left to local civilian authorities, and assuming DoD could overcome its lack of disaster-leadership experience, perhaps it is still worth asking whether the military could lead the federal component of the disaster relief. Assuming the nation will continue using the National Response Plan, which although not perfect is mirrored by all local plans, perhaps the military's large, full-time, disciplined, well-organized workforce is a better organizational structure to lead the response.

From an analysis of the prominent organizational-structure theorist Henry Mintzberg's works, one would categorize the entire national incident management effort outlined in the NRP as the strategy of an "operating adhocracy."¹⁰⁶ Even though the NRP is decidedly devoid of a

FEMA's budget fluctuates based on the emergencies it responds to, which hampers its ability to prepare for disasters. The Article is available online at http://www.boston.com/news/nation/articles/2005/09/24/fema_budget_so_complex_it_defies_consensus/ (21 December 2005).

¹⁰⁵ From author's personal notes taken during his participation in Hurricane Katrina relief operations.

¹⁰⁶ The author read other organizational theory works such Herbert G. Hicks and C. Ray Gullett's *Organizations: Theory and Behavior*. New York: McGraw-Hill Inc., 1975, and Mary Jo Hatch's *Organization Theory Modern Symbolic and Postmortem Perspective*, New York: Oxford University Press, 1997, to try to categorize what type of organizational structure was best suited to coordinate the disaster response. The author found the best books for that purpose were Henry Mintzberg's works: *Mintzberg on Management inside Our Strange World of Organizations*, New York: the Free Press, 1989, *Structure in Fives Designing Effective Organizations*, New Jersey: Prentice Hall, 1993, and with James Brian Quinn. *Readings in the Strategy Process*, Third Edition, New Jersey: Prentice Hall, 1988. Mintzberg conveniently bins all business organizations into several theoretical organizational structures which he repeats in all of

prescriptive incident management procedure, it is the nationally accepted plan for managing incidents of national significance. Reflecting on Mintzberg's work, one can see how the lack of a pedantic strategy is necessary for any organization that must operate in an unpredictable and complex environment, representative not only of Katrina but all catastrophes. He says that typical adhocracies are "never quite sure what it will do next" and that while "the strategy never quite stabilizes totally [it] is responsive to new projects." Optimally, an organization's structure matches its strategy. In the case of the current national response system, DoD's structure is actually the wrong one.

DoD's Organizational Structure

For better or worse, the military has a reputation for being obsessed with order and discipline. Mintzberg would categorize the military's macro organizational structure as some form of *machine bureaucracy*, which "strongly emphasizes the division of labor and unit differentiation, in all of their forms-vertical, horizontal, line/staff, functional, hierarchical and status." From his classification, we learn that formal authority in machine bureaucracies comes down a clear hierarchy where the entire structure is obsessed with control. Strategy, he says, is "clearly a top-down affair, with heavy emphasis on action planning." Machine organizations are precise, reliable, and easy to control. These organizations exist to perform specific functions in a stable environment and are difficult to modify when conditions change.¹⁰⁷

Certainly true of the U.S. military, machine organizations rely heavily on direct supervision and hierarchical reporting to manage their usually large organizations. Managers in this system demand aggregated and filtered reports from each level below them. Unfortunately at very high levels, these reports are often so "bland that the top manager cannot rely on them" and

his books this author used. His detailed descriptions of the theoretical organizational structures leaves no doubt he would consider the NRP the strategy of his operating adhocracy.

¹⁰⁷ Quotes from Henry Mintzberg's *Structure in Fives Designing Effective Organizations*, New Jersey: Prentice Hall, 1993. "strongly emphasizes the division of labor...", p. 164; 'obsessed with control', p.167; "clearly a top-down affair...", p. 169; 'organizational environment', pp. 164-172.

in a “changing environment that manager finds himself out of touch.” In an effort to control output, top managers often issue detailed instructions to subordinates and they use elaborate enforcement mechanism to ensure subordinate’s compliance. The same structure that ensures efficiency in a stable environment guarantees that in a changing environment the bureaucracy spends all of its time getting the “tangible details” or in military vernacular *actionable intelligence* before issuing instructions.¹⁰⁸

Mintzberg concedes that a machine organization is not so rigid that it cannot adapt. In a dynamic situation, subordinate managers in a machine organization implement their own strategy within a grander, yet, still predefined strategy.¹⁰⁹ When the organization requires more than minor changes or is in a very dynamic environment, top managers succeed only when “they are strong enough to cast aside their bureaucratic information and control systems and take matters into their own hands.”¹¹⁰ In reality, despite the romantic appeal of military leaders breaking rules to solve problems, this rarely occurs and often produces no more than Pyrrhic victories. For example, the military could have easily solved any looting problems in New Orleans by simply disregarding its legal restriction on domestic law enforcement and having troops use force to suppress looting. It is uncomfortable to imagine how bad the press would have been if active troops, operating illegally but with pure intentions, had killed any looters in an effort to dampen the looting problem.

¹⁰⁸ Quotes from Henry Mintzberg’s. *Structure in Fives Designing Effective Organizations*. New Jersey: Prentice Hall. 1993. “bland that the top...” and “changing environment”, pp. 184-185; “tangible detail”, p. 185.

¹⁰⁹ There is no questioning the military says it values flexible and adaptive leaders. However, it does so only within the confines of its established regulations and procedures. Machine organizations tolerate very limited change in their organization when changes would otherwise compromise its established rules or procedures. For example, if the military were truly flexible it would tolerate subordinates relaxing facial grooming standards in Iraq or Afghanistan. Despite the potential value in gaining social credibility for its members, it is unlikely the military would agree that wholesale male pogonotrophy would be worth the violation of one of its rules. For a better sense of the cultural significance of beards in the Muslim world see *The Beard of a Muslim and its Importance* by Shaikh Zakariyah Kandahlawi online at <http://www.islam.tc/beard/beard6.html> (31 December 2005).

¹¹⁰ Mintzberg, Henry. *Structure in Fives Designing Effective Organizations*. New Jersey: Prentice Hall. 1993. p. 187.

Precise accounting and control above all else is important to machine organization. A culture obsessed with order and discipline like the military, would find working with a strategy like the NRP very uncomfortable.

A Better Organizational Structure

Structurally, FEMA has two organizational forms. During normal operations, FEMA is organized into ten regional offices and two area offices. Each regional staff serves several states. They help the states plan disaster mitigation programs and meet needs when disasters occur.¹¹¹ During major disasters, FEMA regional offices cede the federal component of incident management to the ad-hoc structures described in the NRP. The regional staff with administrative jurisdictional responsibility over the affected states reorganizes itself to lead the NRP structures created for the sole purpose of mitigating the effects of the disaster. No other federal agency has FEMA's ability to dissolve itself into another structure in response to a disaster and reemerge intact.

Transforming a FEMA regional office from an administrative organization to any number of NRP coordination bodies is not a trivial process. In the process of reorganization, regional offices often must divest themselves of certain coordination activities to better serve the various NRP structures. In a sense, the regional offices temporarily lose their function as coordination entities. Another challenge FEMA encounters is the assimilation of many groups of specialists from across the federal government. These groups vary in size, degree of specialization and frequently come with individual limiting factors that shape how FEMA employs them.¹¹² To a military planner, the most amazing limiting factor FEMA faces is that it never gains full operational control over other federal entities. FEMA must negotiate action from the various

¹¹¹ Find a graphical depiction of the FEMA regions online at <http://www.fema.gov/regions/> (27 September 2005). FEMA's Caribbean and Pacific Area Offices coordinate disaster preparation planning for its territories and possessions in those respective regions.

¹¹² A major limiting factor for active military troops, as an example of a specialized group FEMA integrates, is the Posse Comitatus Act.

response agencies because it does not have the authority to issue orders. During Katrina, military officers working with FEMA struggled to understand exactly how it manages even small disaster responses without authority over its 'subordinate' parts. It appears in this environment that strong professional relationships provide the best explanation for how FEMA makes the system work.

FEMA's seemingly kludged operational organization actually is a formal structure in organizational theory literature. Again referring to Henry Mintzberg's work, FEMA's reorganized organizational structure is an operating adhocracy. He says that an adhocracy has a:

highly organic structure, with little formalization of behavior; specialized jobs based on expert training; a tendency to group the specialists in functional units for house keeping but to deploy them in small project teams to do their work; a reliance on teams and task forces, and on integrating managers of various sorts to encourage mutual adjustments, the key mechanism of coordination, within and between these teams, which are located at various places in the organization.¹¹³

From Mintzberg, one understands that an adhocracy is the best theoretical structure for an organization to assume given the requirement to lead a disaster response. Further, since adhocracies tend to fuse experts drawn from different disciplines into smooth-functioning, ad hoc project teams that use a matrix structure they work best for organizations which have to respond to client's needs.¹¹⁴ Finally, we learn that an adhocracy functions best with a strategy devoid of standardization or direct supervision; neither of which exist in the NRP.

FEMA's disaster response personnel, the managers in an adhocracy, seldom give 'orders'; instead, they coordinate actions laterally among various teams and units. FEMA managers negotiate with their subordinates. All of this talk takes time. Actions occur only after

¹¹³ Henry Mintzberg and James Brian Quinn. *Readings in the Strategy Process*. Third Edition. New Jersey: Prentice Hall, 1988, p. 310.

¹¹⁴ A matrix structure has experts in functional groups for specialize purposes like hiring, training, professional communication but deploy in mixed teams for work. This matrix structure is obvious when one looks at the organization of national incidence management.

the subordinate's true parent agrees to undertake the particular mission. Mintzberg concludes that the root of an adhocracy's inefficiency is the "high cost of communication."¹¹⁵

The adhocracy's organizational dynamic is optimal, albeit inefficient, given the complexity of the disaster response problem. Mintzberg says adhocracies are "not competent at doing ordinary things" because they are designed for extraordinary situations.¹¹⁶ Of all the organizational structures available in organizational theory texts, an adhocracy is the only form that does not require the authority to direct any subordinate agencies' actions. Because the NRP does not derogate any agency's authority, FEMA operates the way it does because theoretically it has no alternatives.

Despite the theoretical advantages of an adhocracy, many believe the government still responded too slowly to Katrina, a critique that is both true and a bit unfair.¹¹⁷ When reporters asked him to comment on the Bush administration's slow response to Hurricane Katrina, Indonesia's tsunami response minister Alwi Shihab said "any country in the first two weeks, they are always criticized." In the same statement to the Associated Press, he said "the first 10 days we were cursed for being sluggish. If the government satisfies half the people, the other half will complain. And this one half will be heard by the world."¹¹⁸

¹¹⁵ Henry Mintzberg, *Structure in Fives Designing Effective Organizations*. New Jersey: Prentice Hall. 1993, p. 277.

¹¹⁶ Many criticize FEMA's inability to organize what many editorial writers believe are simple operations.

¹¹⁷ *The Federal Response to Hurricane Katrina Lessons Learned* dated February 2006 acknowledges that the "response to Hurricane Katrina fell far short of the seamless, coordinated effort that had been envisioned by President Bush when he ordered the creation of a National Response Plan in February 2003." The full report is available online <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf> (25 December 2005).

¹¹⁸ Minister Alwi Shihab led Indonesia's aid effort in the aftermath of the December 2004 tsunami that killed 130,000 Indonesians. The complete article, *A Tale of Two Disaster Responses, While Tsunami Aid Operation Praised, Katrina Response Called Sluggish* is available online at <http://www.msnbc.msn.com/id/6448213/did/9283806#storyContinued> (3 December 2005).

Don't Throw The Baby Out With The Bath Water

The military's organizational structure is the wrong one for managing disaster response if adherence to the current NRP is of concern. The NRP does not provide any agency the authority to direct any other agency. The military's structure requires authority over subordinates in order to function properly. The NRP embraces the notion that the affected people should be the final arbiters of their recovery. In the machine organization, direction flows from the top and the top requires little consensus below. Besides rewriting the NRP, the federal response agencies, state and local governments would have to succumb to the military's precise accounting and control mechanisms if it led disaster response. That is both unnecessary and unwise.

V. Conclusions

Hurricane Katrina should make it obvious to anyone still unconvinced - even after four years of the global war on terror-that the active military's traditional planning environment has changed. Average citizens watched the military crank up an unprecedented deployment to the Hurricane-ravaged Gulf states-more than 72,000 troops in only 12 days.¹¹⁹ The overall Katrina deployment was equivalent to almost four times the authorized strength of the 82nd Airborne Division. But aside from being huge and rapid, DoD's response was seen by regular Americans as the most efficient part of the entire federal effort. Taking place against a backdrop of an ongoing global war, that response has wildly expanded the public's expectations of what its military can accomplish. The proverbial genie is out of the bottle: Whether military leaders like it or not, the next time disaster paralyzes civilian first-responder networks, the "citizen on the street" will seek and expect salvation from the armed forces.

Military officers understand that disaster response is secondary to the armed forces' primary job of winning wars. However, that fact could become increasingly moot as the nation - ordinary citizens, the media and Congress - comes to rely on the military in highly visible domestic emergencies which the public considers more urgent than foreign engagements. In light of this, the active military must learn all it can from Katrina about how to enhance its lifeguard role at home without undercutting its warfighting capabilities abroad.

Following Katrina, President Bush framed a national debate about the military's future roll in disaster response by asking three important questions. Does the military require greater legal authority to participate in domestic responses? Could the military assume a broader role to help improve the overall federal contribution to disaster recovery and relief? And what kind of

¹¹⁹ The 82nd Airborne Division that stationed at Fort Bragg North Carolina has an authorized strength of approximately 18,000 soldiers. The 82nd Airborne deployed to support both Hurricane Andrew and Hurricane Katrina. 82nd Airborne's authorized strength is available online from the United States Force Management Support Agency's database at <https://webtaads.belvoir.army.mil/usafmsa/> (11 December 2005). Monthly ground-troop strength data for Operation Iraqi Freedom available online at http://www.globalsecurity.org/military/ops/iraq_orbat_es.htm (11 December 2005).

natural disaster, if any, would warrant placing the DoD in charge of coordinating and leading a response?

Before addressing those questions, it is worth noting that military leaders find themselves in something of a dilemma. They cannot directly participate in the national debate that will determine their future level of participation in domestic disaster response. Yet, their organization's sense of purpose and identity, as well as their budgets depends on its outcome. Nonetheless, they can help shape the debate by proactively answering the President's questions.

There is a common misperception that laws must change for the military to increase its level of participation in domestic response. This is not true. Current laws already grant the military all the authority it needs to assume a greater involvement in such events. What is missing, however, is a willingness among civilian leaders to press the military into domestic service using legislation that already exists.

The documents that define the military's operational boundaries on United States territory are the Posse Comitatus Act, the Insurrection Act, the Disaster Mitigation Act, the Homeland Security Act and the President's Homeland Security Directive # 5. Briefly, Posse Comitatus prevents the military from conducting domestic law enforcement. The Insurrection Act allows limited law enforcement operations as long as Congress delegates authority to the President to use the military to suppress civil disturbances. The Disaster Mitigation Act, also known as the Stafford Act, authorizes the President to provide federal aid to states suffering from disasters and forms the legal basis for deploying federal military forces to conduct disaster relief operations. The Homeland Security Act established the Department of Homeland Security after 9/11 with the mission to prevent terrorism and coordinate domestic incident management. Finally, the President's Homeland Security Act #5 mandates DoD participation in incident management in a subordinate role to DHS, with which the military is to foster cooperation and coordination.

All that legislation fits into the loose doctrinal framework of the National Incident Management System (NIMS), which provides a philosophy and lexicon for emergency response for all responders—from local fire and police departments up to the most complex military formations. NIMS attempts to decrease, not eliminate, inefficiency among the myriad agencies that are thrown together in disaster response by imposing loose organizational standards on federal responders and creating predictable mechanisms for local responders to communicate with their federal partners. Dealt a hammer blow by Katrina, the relationships laid out by NIMS quickly collapsed as local responders scrambled to improvise remedies to their immediate problems. Such efforts, while attractive in the short term, degraded the overall allocation of resources. For reasons that may never be completely determined, Katrina’s disaster response leaders simply did not follow much of the NIMS’ procedures. Since NIMS failed to survive its first major hurricane intact—without inhibiting DoD’s response—it is not necessary to modify the document to increase the military’s role in disaster response.

In addition to NIMS and the aforementioned documentation, several policies guide military planning and execution of aid to civilian authorities. Among them, Defense Directives (DODD) 3025.1, Military Support to Civil Authorities, and 3025.15, Military Assistance to Civil Authorities, delegate broad approval mechanisms. Under these directives, the Joint Staff’s Joint Director of Military Support (JDOMS) has the approval authority for emergency support in response to natural or man-made disasters. Critical to military commanders is the ability, granted by the directives, to act accordingly to “save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions,” clauses often invoked by senior military commanders during Katrina relief operations to accomplish missions other relief agencies were unable or unwilling to do.

Military leaders must understand that, given the latitude already granted by existing laws, there is no reason to pass new laws or change old ones to increase the degree of armed forces’

participation in disaster response. Instead, the military should ask elected leaders to more quickly press the military into service under existing legislation.

The broad operational boundaries provided under current laws promoted proactive approaches to problem solving among military commanders which then led to speedy, effective operations in response to civilian needs following Katrina. The current system works because it places highly organized, well-equipped and organized force, the military, in a place to fulfill the commands of civilian responders at all levels whose training and experience better suits them to direct overall efforts.

For all their logistical and technological savvy, military commanders cannot know local conditions well enough to direct response efforts. Recognizing this marriage of military support to civilian authority, the nation should carefully consider all options before seeking to change anything. The military's role in domestic disaster response is to support civilian authorities. In the current disaster response system, the military could do more without having its role changed at all.

Beyond all the regulatory legislation and policies enacted before Katrina to ensure cooperation and a speedy response, the Katrina response effort had a generic national-level relief plan, which like the NIMS, it did not follow. The National Response Plan (NRP) is the nation's only comprehensive, full-spectrum approach to domestic incident management. As such, it incorporates procedures from all components of the nation's incident management resources to form a common approach to crisis prevention, preparedness, response and recovery.

The NRP's major shortcoming is that it is not a directive document and therefore cannot force compliance on any agency. The NRP engenders weak leadership relationships among federal agencies, never granting directive authority to any agency over any other. Under this system, the military can choose to do any mission it chooses, as long as the Secretary of Defense deems those missions legal.

The NRP requires that incidents be contained at the lowest level of government possible, with each jurisdiction appealing for help from higher levels only after its own capabilities are overwhelmed. This arrangement puts state governors, who command Army and Air National Guard units, in charge during disaster response. The National Guard is particularly attractive for incident management because it shares virtually all the same operational capabilities as active forces, but is not subject to the same legal restrictions. Being locals however, they are more likely than their active duty counterparts marshaled from other areas to become victims themselves.

The NIMS and NRP systems functioned only partially during Katrina relief, creating an interesting niche for the active military. Specifically, the NRP's tidy request system, flowing from local officials to state to the Federal Emergency Management Agency (FEMA), broke down, leaving the military as FEMA's only resource.

Hobbled by lack of air transport, state and local officials could not do damage assessment in their own backyards, leaving FEMA to do the best it could to ascertain needs and process requests. Without FEMA's coordination efforts, the entire relief effort could have collapsed into an ineffective repair service model with no hope of transitioning from response to recovery.

Because of the military's quick arrival and broad mission authorities, early disconnects with federal, state and local authorities plagued its initial contributions. Nevertheless, DoD performed almost all of the missions allowed in the Stafford Act following Katrina. DOD aircraft did damage assessment, search and rescue, aerial imagery, logistical transport, medical evacuation and even emergency air drops. Army Corps of Engineers units cleared, opened and staffed local airfields, repaired levees, bridges and other infrastructure. Army paratroopers and U.S. Marines conducted ground search and rescue operations, humanitarian relief and evacuation of civilians, by land, sea and air.

Still, there were conflicts and misunderstandings with civilian authorities, often as a result of the civilian side's lack of resources and the havoc wrecked on locals by Katrina. In a

zealous attempt to alleviate suffering in accordance with the Stafford Act, the military's actions, often uncoordinated with FEMA, may have at times complicated the progress of overall relief efforts. Frequently, and often with creative help from their lawyers, military commanders did what they had to do to get the job done, simply because they were the only ones with the capability to render immediate assistance.

In that sense, the federal government should consider fully exploiting the military's current capability to move generally unimpeded around a disaster zone and to plan and control response operations before exploring new roles for it. New roles that would be well-suited to the military, while still conforming to its current position of supporting civilian bodies, include preliminary damage assessments, light urban search and rescue, and command post training.

In the early stages of the Katrina disaster, civilian teams, usually bound to wheeled transport, were unable to complete the damage assessments that are the foundation for further relief work. These assessments are very similar in scope to the military mission of reconnaissance. Therefore, the military should assume the mission of preliminary damage assessment the next time civilian teams are unable to cope with disaster damage.

The military's ability to move unimpeded by harsh terrain makes it well-suited to conducting "light" urban search and rescue. There is no need to copy the highly specialized training and equipment of FEMA-certified teams. But if the military committed to conducting initial searches, it would free the nation's 28 urban search and rescue teams to focus their efforts where their expertise is most needed.

By providing command post training to federal and local emergency response agencies, the military would provide civilians with a common basis for operation in command posts and coordination staffs—a standard currently absent in the civilian sector. This is something the military does well and could easily teach civilian officials.

Katrina demonstrated what a few motivated commanders could accomplish with all the obstacles that currently exist. Formalizing this concept of active participation in support roles would serve the nation well in future disaster relief efforts.

In response to President Bush's third question (could there be a natural disaster large enough to warrant turning response over to DoD?), the answer is, only if the entire system of civilian response, from the local level to federal, were entirely disabled. So the short answer is, no.

Although FEMA was roundly criticized for its Katrina response, DoD lacks many of the qualities needed to make it a suitable candidate for leading disaster responses. For one thing, DoD personnel do not have enough incident-response management experience. Civilian managers spend years learning their trade and cultivating relationships across various agencies. Unless the military were to form dedicated, domestic-relief forces, which would interfere with the armed forces' presumably primary mission of warfighting, it would be impossible to train personnel and place them in jobs where they could acquire the practical experience for responding to disasters.

Although some believe DoD already has a standing capacity for disaster response, it is confined to the small Army Corps of Engineers and the Joint Task Force-Civil Support. The only way DoD could manage incidents better than civilian professionals is if it were to change its dual-use force policy, dedicate considerable manpower to incident management, and then create a system to develop and catalog incident management experience among its members; a massive change from its current way of doing business.

Furthermore, DoD's overall structure as a discipline-driven, highly organized hierarchy is not well-suited to the National Response Plan. Instead, FEMA's looser structure, based on a highly flexible system of response that depends on full-time professionals who have strong relationships built over years with other managers in various organizations, is probably the best choice. FEMA's ad hoc culture, which can admittedly seem inefficient, is well suited to the

complexity, even chaos, of many disaster response problems. Many blamed FEMA for responding slowly to Katrina, a critique both true and unfair, considering the storm's unprecedented destruction.

In response to the questions posed by President Bush, the military does not require additional authority or a new role to improve federal disaster response. Given the generous latitude already afforded it in current legislation, the military can and should do more to assist civilian authorities in domestic disaster response, but without Congress changing or passing laws.

To increase their participation in disaster response, the military only need promulgate a basic understanding of the legal restrictions on military participation and further encourage the initiative its leaders demonstrated after Katrina. While there does not appear any plausible disaster that would warrant the military leading relief efforts, the military should make an earnest effort to participate in all natural disaster relief operations in some capacity.

Just as the United State's awareness of terrorism changed after 9/11, Hurricane Katrina changed the nation's expectation about the scope of military participation during a natural disaster. The military can and should continue supporting civil authorities in disaster relief, but never be so arrogant as to presume it can supplant them.

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